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Proceedings of the Preparatory Commission at its second session (26 July–13 August 1999)

Contents

		Page
	Summary	7
Annex I.	List of documents issued at the second session of the Preparatory Commission	9
Annex II.	Rules of Procedure and Evidence	15
Appendix.	Discussion papers proposed by the Coordinator	16
	Part 5 of the Rome Statute. Investigation and Prosecution	16
Rule		
5.1	Determination of reasonable basis to proceed with an investigation under article 15	16
5.2	Evaluation by the Prosecutor of information provided	16
5.3	Notification of a decision by the Prosecutor not to initiate an investigation	16
5.4	Notification of a decision by the Prosecutor not to prosecute	17
5.5	Request for review	17
5.6	Decision of the Pre-Trial Chamber based on article 53, paragraph 3 (a)	18
5.7	Review by the Pre-Trial Chamber pursuant to article 53, paragraph 3 (b)	18
5.8	Decision by the Pre-Trial Chamber based on article 53, paragraph 3 (b)	19
5.9	Record of questioning in every case	19
5.10	Recording of questioning in certain cases	19
5.11	Collection of information regarding the state of health of the person concerned	20

99-24055 (E) 080999

5.12 Evidence that cannot be reproduced 21
5.13 Collection of evidence in the territory of a State Party 21
5.14 Collection of evidence at the request of the defence 22
5.15 Detention in the custodial State 22
5.16 Pre-trial detention at the seat of the Court 23
5.17 Conditional release 23
5.18 Proceedings before the confirmation hearing 24
5.19 Proceedings at the confirmation hearing in the presence of the person charged 26
5.20 Measures to ensure the presence of the person concerned at the confirmation hearing 27
5.21 Waiver by the person concerned of the right to be present at the confirmation hearing 27
5.22 Decision to hold the confirmation hearing in the absence of the person concerned 28
5.23 Confirmation hearing in the absence of the person concerned 28
5.24 Procedure in the event of different decisions on multiple charges 29
5.25 Amendment of the charges 29
5.26 Notification of the decision on the confirmation of charges 30
5.27 Constitution of the Trial Chamber 30
5.28 Pre-trial disclosure relating to prosecution witnesses 30
5.29 Inspection of material in possession or control of the Prosecutor 31
5.30 Disclosure by the defence 31
5.31 Procedures for raising a ground for excluding criminal responsibility under article 31, paragraph 3 32
5.32 Restriction on disclosure 32
5.33 Ruling on exculpatory evidence 33
5.34 Continuing requirements to disclose 34

Part 6 of the Rome Statute. The Trial 34

6.1 General provisions 34
6.2 Procedures relating to the relevance or admissibility of evidence 34
6.3 Agreements as to evidence 35
6.4 Privileged communications and information 35
6.5 Evidence in cases of sexual violence 36
6.6 *Amicus curiae* and other forms of submission 36
6.7 Solemn undertaking 37
6.8 Findings and evidence from other proceedings 37
6.9 Self-incrimination by a witness 38

6.10	Status conferences	39
6.11	Motions challenging admissibility or jurisdiction	39
6.12	Other motions	40
6.13	Medical examination of the accused	40
6.14	Instruments of restraint	40
6.15	Joint and separate trials	41
6.16	Record of the trial proceedings	41
6.17	Custody of evidence	41
6.18	Directions for the conduct of the proceedings and testimony	41
6.19	Record of the proceedings	42
6.20	Disclosure and additional evidence	42
6.21	Additional hearings on matters related to sentence or reparations	42
6.22	Closure of evidence and closing statements	43
6.23	Postponement of the deliberations	43
6.24	Delivery of the decisions of the Trial Chamber	43
6.25	Decision on the admission of guilt	44
6.26	Live testimony by means of audio or video link technology	44
6.27	Prior recorded testimony	44
6.28	Protective measures	45
6.29	Special measures	46
6.30	Participation of victims in the proceedings	46
6.31	Reparations to victims	48
6.X	Place of the proceedings	50
6.32	Exercise of jurisdiction	50
6.33	Application of the Statute and Rules	51
6.34	Statute of limitation	51
6.35	Investigation, prosecution and trial	52
6.36	Penalties	52
6.37	International cooperation and judicial assistance	52
6.38	*Ne bis in idem*	53
6.39	Immediate arrest	53
6.40	Disruption of proceedings	53
6.41	Refusal to comply with a direction by the Court	53
6.42	Concurrence	54

Part 8 of the Rome Statute. The Appeal 54
Section 1. General provisions 54
8.1 Rules governing proceedings in the Appeals Chamber 54
Section 2. Ordinary appeal proceedings 54
8.2 Notice of appeal 54
8.3 Procedure for the appeal 55
8.4 Discontinuance of the appeal 55
8.5 Judgement on appeals against orders under article 75 55
Section 3. Simplified appeals proceedings 55
8.6 Notice of appeal against decisions under article 81 (3) (c) (ii) and article 82 (1) (a), (b) or (c) 55
8.7 Leave to appeal under article 82 (1) (d) and article 82 (2) 56
8.8 Procedure for appeals under article 81 (3) (c) (ii) and article 82 (1) and (2) 56
8.9 Discontinuance of the appeal 56
8.10 Judgement on appeals under article 81 (3) (c) (ii), article 82 (1) or article 82 (2) 57
Annex III. Rules of Procedure and Evidence related to Part 4 of the Rome Statute 58
Appendix. Discussion paper proposed by the Coordinator 59
Part 4 of the Rome Statute. Organization and Composition of the Court 59
4.1 Rules relating to situations that may affect the functioning of the Court 59
4.1.1 Definition of serious misconduct and serious breach of duty 59
1. Serious misconduct 59
2. Serious breach of duty 60
4.1.2 Definition of misconduct of a less serious nature 60
4.1.3 Receipt of complaints 60
4.1.4 Procedure 61
1. Common provisions on rights of the defence 61
2. Procedure in the event of a request for removal from office 61
(a) Judges 61
(b) Registrar or Deputy Registrar 62
(c) Deputy Prosecutor 62
(d) Prosecutor 63
Penalties 63
1. Removal from office 63
2. Disciplinary measures 63

[3. Time limits] 63

Annex IV. Elements of Crimes 64

Appendix. Discussion papers proposed by the Coordinator 65

Article

8 (2) (a) (iv) War crime of destruction and appropriation of property 65

8 (2) (a) (v) War crime of compelling service in hostile forces 65

8 (2) (a) (vi) War crime of denying a fair trial 66

8 (2) (a) (vii)-1 War crime of unlawful deportation and transfer 66

8 (2) (a) (vii)-2 War crime of unlawful confinement 66

8 (2) (a) (viii)-2 War crime of taking hostages 66

8 (2) (c) (i)-1 War crime of murder 67

8 (2) (c) (i)-2 War crime of mutilation 67

8 (2) (c) (i)-3 War crime of cruel treatment 68

8 (2) (c) (i)-4 War crime of torture 68

8 (2) (c) (ii) War crime of outrages upon personal dignity 68

8 (2) (c) (iii) War crime of taking hostages 68

8 (2) (c) (iv) War crime of sentencing or execution without due process 69

8 (2) (b) (xxii)-1 War crime of rape 69

8 (2) (b) (xxii)-2 War crime of sexual slavery 70

8 (2) (b) (xxii)-3 War crime of enforced prostitution 70

8 (2) (b) (xxii)-4 War crime of forced pregnancy 70

8 (2) (b) (xxii)-5 War crime of enforced sterilization 71

8 (2) (b) (xxii)-6 War crime of sexual violence 71

8 (2) (b) (xiii) War crime of destroying or seizing the enemy's property 71

8 (2) (b) (xiv) War crime of depriving the nationals of the hostile power of rights or actions 72

8 (2) (b) (xv) War crime of compelling participation in military operations 72

8 (2) (b) (xvi) War crime of pillaging 72

8 (2) (b) (xxvi) War crime of using, conscripting or enlisting children 72

8 (2) (b) (x)-1 War crime of mutilation 73

8 (2) (b) (x)-2 War crime of medical or scientific experiments 73

8 (2) (b) (xxi) War crime of outrages upon personal dignity 73

8 (2) (b) (i) War crime of attacking civilians 74

8 (2) (b) (ii) War crime of attacking civilian objects 74

8 (2) (b) (iii) War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission 74

8 (2) (b) (vi) War crime of killing or wounding a person *hors de combat* 75

8 (2) (b) (vii)-1 War crime of improper use of a flag of truce 75

8 (2) (b) (vii)-2 War crime of improper use of a flag, insignia or uniform of the hostile party .. 75

8 (2) (b) (vii)-3 War crime of improper use of a flag, insignia or uniform of the United Nations 75

8 (2) (b) (vii)-4 War crime of improper use of the distinctive emblems of the Geneva Conventions 76

8 (2) (b) (xi) War crime of treacherously killing or wounding 76

8 (2) (b) (xii) War crime of denying quarter 76

Compilation of proposals prepared by the Secretariat:

8 (2) (b) (viii) 77

Summary*

Rapporteur: Mr. Salah **Suheimat** (Jordan)

1. The Preparatory Commission for the International Criminal Court, established in accordance with resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, held its second session at United Nations Headquarters from 26 July to 13 August 1999, in accordance with General Assembly resolution 53/105 of 8 December 1998.[1]

2. The Preparatory Commission continued its work in accordance with the terms established in paragraph 2 of resolution F of the Conference, and paragraphs 5 and 6 of General Assembly resolution 53/105.[2]

3. The Bureau of the Preparatory Commission, elected at its 1st and 2nd meetings, on 16 and 22 February 1999, continued its work with the following composition:

Chairperson:
Mr. Philippe Kirsch (Canada)

Vice-Chairpersons:
Mr. George Winston McKenzie (Trinidad and Tobago)
Mr. Medard R. Rwelamira (South Africa)
Mr. Muhamed Sacirbey (Bosnia and Herzegovina)

Rapporteur:
Mr. Salah Suheimat (Jordan)

4. The coordinators, designated by the Chairperson, in consultation with the Bureau, at the first session of the Preparatory Commission,[3] continued their work also during the second session of the Preparatory Commission.

5. The Director of the Codification Division of the Office of Legal Affairs, Mr. Václav Mikulka, acted as Secretary of the Preparatory Commission. The Codification Division provided the substantive servicing for the Commission.

6. At its second session, the Preparatory Commission proceeded with its work on the basis of its agenda (PCNICC/1999/L.1), adopted on 16 February 1999.

7. Taking account of the priorities set forth by resolution F of the Conference, the Preparatory Commission agreed on a work plan, which, as in the first session, focused on two instruments necessary for the functioning of the Court: the Rules of Procedure and Evidence, and the Elements of Crimes. With respect to the Rules of Procedure and Evidence, the Preparatory Commission concentrated on rules pertaining to the following parts of the Rome Statute of the International Criminal Court: Part 4 (Composition and Administration of the Court); Part 5 (Investigation and Prosecution); Part 6 (The Trial); and Part 8 (Appeal and Revision). With regard to the Elements of Crimes, the Preparatory Commission

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* Incorporating documents PCNICC/1999/L.4, as orally amended at the 8th plenary meeting, on 13 August 1999, and annexes I (list of documents issued at the second session of the Preparatory Commission) and II, III and IV (documents prepared by the Secretariat on the basis of the oral reports of the Coordinators for the Rules of Procedure and Evidence, for the Rules of Procedure and Evidence related to Part 4 and for the Elements of Crimes).

[1] Under paragraph 4 of General Assembly resolution 53/105, the Secretary-General was requested to convene the Preparatory Commission, in accordance with resolution F of the Conference, from 16 to 26 February, 26 July to 13 August and 29 November to 17 December 1999, to carry out the mandate of that resolution and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.

[2] For details see document PCNICC/1999/L.3/Rev.1, paras. 2, 4 and 5.

[3] For the list of Coordinators, see PCNICC/1999/L.3/Rev.1, paras. 12–14.

concentrated on the elements of war crimes. The Commission also undertook a number of informal consultations with respect to the crime of aggression.

8. At its 7th meeting, on 9 August 1999, the Preparatory Commission agreed on the following arrangements concerning the question of the crime of aggression:

(a) A working group on the crime of aggression will be established at the outset of the next session of the Preparatory Commission;

(b) At the next and the following sessions of the Preparatory Commission, the plenary traditionally held each Monday morning will be maintained, but will be significantly shorter, essentially limited to brief reports by the coordinators;

(c) A meeting of the working group on the crime of aggression will follow each of the Monday morning plenary meetings, until the end of the morning;

(d) Informal consultations on the crime of aggression will be conducted at other times where possible and appropriate, it being understood that this should be without prejudice to the requirements of the work on subjects which must be completed by 30 June 2000. Within the limits of what is practicable, the Secretariat will endeavour to provide the best possible facilities for those informal consultations;

(e) The above arrangements are based on a clear and general understanding that they will remain unchanged until 30 June 2000, and that no additional requests concerning organization of the work with respect to the crime of aggression will be made before that date.

9. At its 8th meeting, on 13 August 1999, the Preparatory Commission took note of the oral reports of the Coordinators for the Rules of Procedure and Evidence related to Part 4 and to Parts 5, 6 and 8 of the Rome Statute and of the Coordinator for Elements of Crimes.

10. At the same meeting, for ease of reference of delegations, the Preparatory Commission requested the Secretariat to prepare a document on the basis of the oral reports of the Coordinators and to annex it to the present report.

11. At its 5th meeting, on 30 July 1999, the Preparatory Commission was addressed by Judge Gabrielle Kirk McDonald, President of the International Tribunal for the Former Yugoslavia.

12. The Preparatory Commission took note of the Intergovernmental Regional Caribbean Conference for the signature and ratification of the Statute of the International Criminal Court hosted by the Ministry of the Attorney General of Trinidad and Tobago and the No Peace Without Justice Foundation, in Port-of-Spain from 15 to 17 March 1999, as well as the Port-of-Spain Declaration resulting therefrom; the international seminar on victims' access to the International Criminal Court hosted by the Government of France in Paris from 27 to 29 April 1999; the informal inter-sessional meeting hosted by the International Institute of Higher Studies in Criminal Sciences in Siracusa, Italy from 21 to 27 June 1999; and the two briefing sessions on ratification and implementation legislation of the Rome Statute, hosted by the International Human Rights Law Institute of DePaul University and Parliamentarians for Global Action on 31 July and 7 August 1999 at United Nations Headquarters in New York.

13. The Preparatory Commission also noted with satisfaction that, during its second session, 23 delegates had made use of the trust fund which, pursuant to paragraph 8 of General Assembly resolution 53/105, had been established to facilitate the participation of the least developed countries in the work of the Commission. The International Human Rights Law Institute of DePaul University provided accommodation for those delegates.

Annex I

List of documents issued at the second session of the Preparatory Commission (26 July–13 August 1999)

General documents

Symbol	*Description*
PCNICC/1999/L.4	Proceedings of the Preparatory Commission at its first session (draft summary)
PCNICC/1999/L.4/Rev.1	Proceedings of the Preparatory Commission at its first session (summary)
PCNICC/1999/DP.7/Add.1/Rev.1	Revision: proposal by France concerning the Rules of Procedure and Evidence: Part 3, section 3, subsection 2 (Conduct of investigation and proceedings) — Addendum (continued)
PCNICC/1999/DP.8/Add.1/Rev.1	Revision: proposal by France on Rules of Procedure and Evidence: Part 3, section 3, subsection 3 (Closure of the pre-trial phase) — Addendum (continued)
PCNICC/1999/DP.8/Add.2/Rev.1	Revision: proposal by France concerning the Rules of Procedure and Evidence: Part 3, section 3, subsection 3 (Closure of the pre-trial phase) — Addendum (continued)
PCNICC/1999/DP.12	Proposal submitted by the Russian Federation: Definition of the crime of aggression
PCNICC/1999/DP.13	Proposal submitted by Germany: Definition of the crime of aggression
PCNICC/1999/INF.1/Rev.1	List of delegations: first and second sessions of the Preparatory Commission
PCNICC/1999/INF.2	Compilation proposals on the crime of aggression submitted at the Preparatory Committee on the Establishment of an International Criminal Court (1996–1998), the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (1998) and the Preparatory Commission for the International Criminal Court (1999)
PCNICC/1999/INF.2/Add.1	Addendum (continued)

Working Group on Rules of Procedure and Evidence

Symbol	*Description*
PCNICC/1999/WGRPE/DP.5	Proposal by France concerning the Rules of Procedure and Evidence: Recapitulation of the general outline proposed by France
PCNICC/1999/WGRPE/DP.6	Proposal by France concerning the Rules of Procedure and Evidence: Appeal
PCNICC/1999/WGRPE/DP.7	Proposal by France concerning the Rules of Procedure and Evidence: Compensation
PCNICC/1999/WGRPE/DP.8	Proposal submitted by Colombia, Spain and Venezuela concerning the Rules of Procedure and Evidence: Official and working languages
PCNICC/1999/WGRPE/DP.9	Proposal submitted by Colombia, Spain and Venezuela concerning the Rules of Procedure and Evidence: Reporting judge

Symbol	*Description*
PCNICC/1999/WGRPE/DP.10	Proposal submitted by Spain and Venezuela concerning the Rules of Procedure and Evidence: Replacements
PCNICC/1999/WGRPE/DP.11	Proposal by Spain and Venezuela concerning the Rules of Procedure and Evidence: Excusing and disqualification of judges
PCNICC/1999/WGRPE/DP.12	Proposal submitted by Spain and Venezuela concerning the Rules of Procedure and Evidence: Disciplinary measures
PCNICC/1999/WGRPE/DP.13	Proposal by France concerning the Rules of Procedure and Evidence: Section 6. Revision
PCNICC/1999/WGRPE/DP.14	Proposal submitted by Colombia concerning the Rules of Procedure and Evidence: Article 74, paragraph 1, of the Statute of the International Criminal Court
PCNICC/1999/WGRPE/DP.15	Proposal by Colombia concerning the Rules of Procedure and Evidence: Rules relating to Part 6 of the Statute
PCNICC/1999/WGRPE/DP.16	Proposal by Spain concerning the Rules of Procedure and Evidence: Excusing and disqualification: document PCNICC/1999/WGRPE/DP.11 submitted by Spain and Venezuela
PCNICC/1999/WGRPE/DP.17	Proposal by Italy concerning article 70 of the Rome Statute
PCNICC/1999/WGRPE/DP.18	Proposal of Italy on evidence, investigation and the rights of the accused
PCNICC/1999/WGRPE/DP.19	Proposal submitted by Australia on Rules of Procedure and Evidence: Part 6 of the Rome Statute
PCNICC/1999/WGRPE/DP.20	Proposal submitted by Italy concerning the Rules of Procedure and Evidence: Protection of victims' and witnesses' identity
PCNICC/1999/WGRPE/DP.21	Proposal submitted by Italy concerning the Rules of Procedure and Evidence: Protection of victims and witnesses
PCNICC/1999/WGRPE/DP.22	Proposal submitted by Croatia concerning the Rules of Procedure and Evidence: Rule 6.9. Privileged witnesses and self-incrimination by a witness
PCNICC/1999/WGRPE/DP.23	Proposal submitted by Croatia concerning the Rules of Procedure and Evidence: Rule 6.6 *Amicus Curiae* and other forms of submission
PCNICC/1999/WGRPE/DP.24	Proposal submitted by Colombia concerning the Rules of Procedure and Evidence: Comments on the Coordinator's proposal (PCNICC/1999/WGRPE/RT.5)
PCNICC/1999/WGRPE/DP.25	Proposal submitted by Austria concerning the Rules of Procedure and Evidence: Article 70. Offences against the administration of justice
PCNICC/1999/WGRPE/DP.26	Proposal submitted by Australia and France on rules to govern the appeal
PCNICC/1999/WGRPE/DP.27	Proposal submitted by the Netherlands in connection with document PCNICC/1999/WGRPE/RT.5
PCNICC/1999/WGRPE/DP.28	Proposed amendment to rule 6.2 of document PCNICC/1999/WGRPE/RT.5 submitted by Andorra, Argentina, Bolivia, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, Italy, Mexico, Mozambique, Peru, Portugal, Spain and Venezuela
PCNICC/1999/WGRPE/DP.29	Proposal submitted by Poland concerning the Rules of Procedure and Evidence: Article 70
PCNICC/1999/WGRPE/DP.30	Proposal submitted by Colombia concerning the Rules of Procedure and Evidence: Comments on the Coordinator's proposal (PCNICC/1999/WGRPE/RT.5)

Symbol	*Description*
PCNICC/1999/WGRPE/DP.31	Proposal submitted by the Netherlands and Poland concerning the Rules of Procedure and Evidence: Article 70
PCNICC/1999/WGRPE/DP.32	Proposal submitted by Australia and France to govern revision of conviction or sentence
PCNICC/1999/WGRPE/DP.33	Proposal submitted by Andorra, Argentina, Bolivia, Chile, Colombia, Costa Rica, Cuba, Italy, Mexico, Mozambique, Peru, Portugal, Spain and Venezuela: Amendments to rules 6.7, 6.17, 6.18, 6.21, 6.22 and 6.23 of document PCNICC/1999/WGRPE/RT.5
PCNICC/1999/WGRPE/DP.34	Proposal submitted by France: Commentary on document PCNICC/1999/WGRPE/DP.19
PCNICC/1999/WGRPE/DP.35	Proposal submitted by the Netherlands concerning the Rules of Procedure and Evidence in connection with document PCNICC/1999/WGRPE/DP.20: Rule A. Guardian of the victims' and witnesses' identity
PCNICC/1999/WGRPE/DP.36	Proposal submitted by Colombia: Comments on the discussion paper proposed by the Coordinator (PCNICC/1999/WGRPE/RT.5)
PCNICC/1999/WGRPE/DP.37	Proposal by Colombia: Comments on the report on the international seminar on victims' access to the International Criminal Court (document PCNICC/1999/WGRPE/INF.2)
PCNICC/1999/WGRPE/DP.38	Request from the Governments of Bosnia and Herzegovina, Canada, Colombia, Egypt, Portugal, Senegal, and Spain regarding the report prepared by Judge Florence Ndepele Mwachande Mumba, Judge Gabrielle Kirk McDonald, Judge Antonio Cassese, Judge Richard George May, Judge Almiro Simoes Rodrigues and Judge Mohammed Bennouna on the Rules of Procedure and Evidence of the Statute
PCNICC/1999/WGRPE/INF.2	Report on the international seminar on victims' access to the International Criminal Court
PCNICC/1999/WGRPE/INF.2/Add.1	Addendum: Annex II (List of experts); and Annex III (List of Observers)
PCNICC/1999/WGRPE/RT.5/Rev.1	Revised discussion paper proposed by the Coordinator: Rules of Procedure and Evidence related to Part 6 of the Statute
PCNICC/1999/WGRPE/RT.5/Rev.1/Add.1	Addendum: Revised discussion paper proposed by the Coordinator — Part 6 of the Rome Statute: The Trial
PCNICC/1999/WGRPE/RT.5/Rev.1/Add.1/Corr.1	Corrigendum
PCNICC/1999/WGRPE/RT.5/Rev.1/Add.2	Addendum: Revised discussion paper proposed by the Coordinator — Part 6 of the Statute
PCNICC/1999/WGRPE/RT.5/Rev.1/Add.3	Addendum: Revised discussion paper proposed by the Coordinator — Rules of Procedure and Evidence related to Part 6 of the Statute
PCNICC/1999/WGRPE/RT.6	Revised discussion paper proposed by the Coordinator: Part 5 of the Statute: Rules 5.1 to 5.4. Decision of the Prosecutor on the initiation of an investigation
PCNICC/1999/WGRPE/RT.7	Discussion paper proposed by the Coordinator — Part 8 of the Statute

Working Group on Rules of Procedure and Evidence (Part 4: Organization and Composition of the Court)

Symbol	*Description*
PCNICC/1999/WGRPE(4)/DP.1	Coordinator's paper: Scheme of work for Part 4: Organization and composition of the Court
PCNICC/1999/WGRPE(4)/DP.2/Rev.1	Revision: Proposal submitted by Canada, France, Germany and the Netherlands in connection with article 43 of the Rome Statute of the International Criminal Court concerning the Rules of Procedure and Evidence as regards document PCNICC/1999/DP.1: Rule 38 a. Responsibilities of the Registrar related to the defence
PCNICC/1999/WGRPE(4)/DP.3/Rev.1	Revised proposal submitted by Denmark concerning Part 4, Section 2, of the Rules of Procedure and Evidence: Inclusion of a new rule 20 (f): "Alternate and substitute judges"
PCNICC/1999/WGRPE(4)/DP.4	Canadian proposals to PCNICC/1999/WGRPE/INF.2 of 6 July 1999: Workshop 3 — Protection of victims and witnesses
PCNICC/1999/WGRPE(4)/RT.1	Coordinator's discussion paper: Part 4: Organization and composition of the Court

Working Group on Elements of Crimes

Symbol	*Description*
PCNICC/1999/WGEC/DP.8	Proposal submitted by Costa Rica, Hungary and Switzerland on certain provisions of article 8, paragraph 2 (b), of the Rome Statute of the International Criminal Court: (viii), (x), (xiii), (xiv), (xv), (xvi), (xxi), (xxii), (xxvi)
PCNICC/1999/WGEC/DP.9	Proposal submitted by Spain: working paper on Elements of Crimes: Elements of war crimes (article 8, paragraph 2)
PCNICC/1999/WGEC/DP.10	Proposal submitted by Costa Rica, Hungary and Switzerland on article 8, paragraph 2 (c), of the Rome Statute of the International Criminal Court
PCNICC/1999/WGEC/DP.10/Corr.1	Corrigendum (Spanish only)
PCNICC/1999/WGEC/DP.11	Proposal submitted by Costa Rica, Hungary and Switzerland on certain provisions of article 8, paragraph 2 (e), of the Rome Statute of the International Criminal Court: (v), (vi), (vii), (viii), (xi), (xii)
PCNICC/1999/WGEC/DP.12	Proposal submitted by Japan: Elements of crimes: article 8, paragraph 2 (b) (i) to (xvi)
PCNICC/1999/WGEC/DP.13	Proposal by Belgium concerning article 8, paragraph 2 (c) (iv), of the Statute of the International Criminal Court
PCNICC/1999/WGEC/DP.14	Proposal by Belgium concerning article 8, paragraph 2 (b) (xxii), of the Statute of the International Criminal Court
PCNICC/1999/WGEC/DP.15	Proposal submitted by Colombia: Comments on the proposal submitted by Costa Rica, Hungary and Switzerland on article 8, paragraph 2 (c), of the Rome Statute of the International Criminal Court (PCNICC/1999/WGEC/DP.10)

Symbol	*Description*
PCNICC/1999/WGEC/DP.16	Proposal submitted by Colombia: Comments on the proposal by the delegations of Costa Rica, Hungary and Switzerland concerning article 8, paragraph 2 (b) of the Rome Statute (PCNICC/1999/WGEC/DP.8)
PCNICC/1999/WGEC/DP.17	Proposal submitted by Argentina, Bangladesh and Mexico concerning rule 6.5, "Evidence in cases of sexual violence", contained in document PCNICC/1999/WGRPE/RT.5
PCNICC/1999/WGEC/DP.18	Proposal submitted by the Republic of Korea concerning article 8, paragraph 2 (c) (i)
PCNICC/1999/WGEC/DP.19	Proposal by Belgium concerning article 8, paragraph 2 (b) (xxvi), of the Statute of the International Criminal Court
PCNICC/1999/WGEC/DP.20	Proposal submitted by Costa Rica, Hungary and Switzerland on article 8, paragraph 2 (b) (i), (ii), (iii), (iv), (v), (vi), (vii), (ix), (xi) and (xii) of the Rome Statute of the International Criminal Court
PCNICC/1999/WGEC/DP.21	Proposal submitted by the Republic of Korea concerning the elements of crimes of the war crime of sexual violence under article 8, paragraph 2 (b) (xxii)
PCNICC/1999/WGEC/DP.22	Proposal submitted by Costa Rica, Hungary and Switzerland on article 8, paragraph 2 (b) (xvii), (xviii), (xix), (xx), (xxiii), (xxiv) and (xxv) of the Rome Statute of the International Criminal Court
PCNICC/1999/WGEC/DP.23	Proposal submitted by Colombia: Comments on the proposal submitted by Costa Rica, Hungary and Switzerland and the proposal presented by Japan on article 8, paragraph 2 (b) (xiv), (xv) and (xxvi), of the Rome Statute (PCNICC/1999/WGEC/DP.8 and DP.12)
PCNICC/1999/WGEC/DP.24	Proposal submitted by Spain concerning article 8, paragraph 2 (b) (xxiv), of the Rome Statute of the International Criminal Court
PCNICC/1999/WGEC/DP.25	Proposal submitted by Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Morocco, Oman, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic, Tunisia, the United Arab Emirates and Yemen on article 8, paragraph 2 (b) (viii): War crime of deporting or transferring population
PCNICC/1999/WGEC/DP.26	Proposal submitted by Colombia on article 8, paragraph 2 (b) (xx), of the Rome Statute of the International Criminal Court
PCNICC/1999/WGEC/DP.27	Proposal submitted by China and the Russian Federation on the elements of article 8, paragraph 2 (c) (i), in the discussion paper proposed by the Coordinator (PCNICC/1999/WGEC/RT.5/Rev.1)
PCNICC/1999/WGEC/INF.2	Request from the Governments of Belgium, Costa Rica, Finland, Hungary, the Republic of Korea and South Africa and the Permanent Observer Mission of Switzerland regarding the text prepared by the International Committee of the Red Cross on article 8, paragraph 2 (b), (c) and (e), of the Rome Statute of the International Criminal Court

Symbol	*Description*
PCNICC/1999/WGEC/INF.2/Add.1	Addendum (continued): Request from the Governments of Belgium, Costa Rica, Finland, Hungary, the Republic of Korea, and South Africa and the Permanent Observer Mission of Switzerland to the United Nations regarding the text prepared by the International Committee of the Red Cross on article 8, paragraph 2 (b), (i), (ii), (iii), (iv), (v), (vi), (vii), (ix), (xi) and (xii), of the Statute
PCNICC/1999/WGEC/INF.2/Add.2	Addendum (continued): article 8, paragraph 2 (b) (xvii), (xviii), (xix), (xx), (xxiii), (xxiv) and (xxv)
PCNICC/1999/WGEC/INF.3	Proposals in relation to elements of article 8, paragraph 2 (b) (viii), of the Rome Statute of the International Criminal Court
PCNICC/1999/WGEC/INF.3/Corr.1	Corrigendum
PCNICC/1999/WGEC/RT.4	Discussion paper proposed by the Coordinator: Article 8, paragraph 2 (a)
PCNICC/1999/WGEC/RT.5/Rev.1	Discussion paper proposed by the Coordinator: Article 8, paragraph 2 (c)
PCNICC/1999/WGEC/RT.6	Discussion paper proposed by the Coordinator: Article 8, paragraph 2 (b) (xxii)
PCNICC/1999/WGEC/RT.7	Discussion paper proposed by the Coordinator: Article 8, paragraph 2 (b) (xiii)–(xvi) and (xxvi)
PCNICC/1999/WGEC/RT.8	Discussion paper proposed by the Coordinator: Article 8, paragraph 2 (b) (x) and (xxi)
PCNICC/1999/WGEC/RT.9	Discussion paper proposed by the Coordinator: Article 8, paragraph 2 (b) (i)–(iii)
PCNICC/1999/WGEC/RT.10	Discussion paper proposed by the Coordinator: Article 8, paragraph 2 (b) (vi), (vii), (xi) and (xii)

Annex II

Rules of Procedure and Evidence

Annex II was prepared by the Secretariat on the basis of the oral report of the Coordinator for Working Group on Rules of Procedure and Evidence presented to the Preparatory Commission at its 8th meeting, on 13 August 1999.

1. The Working Group on Rules of Procedure and Evidence held 12 meetings, from 26 July to 6 August 1999. It had before it several proposals, in addition to those which had been made at the first session of the Preparatory Commission and which are listed in the summary of the proceedings of that session (see PCNICC/1999/L.3/Rev.1). The proposals submitted at the second session are contained in the following documents:

- PCNICC/1999/DP.7/Add.1/Rev.1;
- PCNICC/1999/DP.8/Add.1/Rev.1;
- PCNICC/1999/DP.8/Add.2/Rev.1;
- PCNICC/1999/WGRPE/DP.5 to DP.38;
- PCNICC/1999/WGRPE/INF.2 and Add.1.

2. The Working Group considered proposals related to Parts 6 and 8 of the Statute. Numerous informal consultations were also held on rules related to the aforementioned parts of the Statute, as well as to Part 5, which the Preparatory Commission had begun to consider during its first session.

3. Taking account of the views expressed in the Working Group and in informal consultations, the Coordinator proposed the following discussion papers for consideration at the next session of the Preparatory Commission (see appendix):

- PCNICC/WGRPE/RT.5/Rev.1, Add.1 and Corr.1, and Add.2 and 3 on rules related to Part 6 of the Statute;
- PCNICC/WGRPE/RT.6 on rules related to Part 5 of the Statute;
- PCNICC/WGRPE/RT.7 on rules related to Part 8 of the Statute.

4. The Working Group made considerable progress on Parts 5, 6 and 8 of the Statute, even though it was unable to conclude its consideration of the latter part.

Appendix

Discussion papers proposed by the Coordinator

Part 5 of the Rome Statute
Investigation and Prosecution

Rules 5.1 to 5.4[1]
Decision of the Prosecutor on the initiation of an investigation

Rule 5.1
Determination of reasonable basis to proceed with an investigation under article 15

In determining whether there is a reasonable basis to proceed with an investigation under article 15, paragraph 3, the Prosecutor shall consider the factors set out in article 53, paragraph 1 (a) to (c).

Rule 5.2
Evaluation by the Prosecutor of information provided

In acting pursuant to article 53, paragraph 1, the Prosecutor shall, in evaluating the information made available to him or her, analyse the seriousness of the information received.

For this purpose, the Prosecutor may seek additional information from States, organs of the United Nations, intergovernmental and non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

Rule 5.3
Notification of a decision by the Prosecutor not to initiate an investigation

(a)[2] When the Prosecutor decides not to initiate an investigation under article 53, paragraph 1, he or she shall promptly inform in writing the State or States that referred a situation under article 14, or the Security Council in respect of a situation covered by article 13, paragraph (b).

When the Prosecutor decides not to submit to the Pre-Trial Chamber a request for authorization of an investigation under article 15, he or she shall promptly inform in writing those who provided him or her with information in accordance with that article.

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[1] These rules are taken from document PCNICC/1999/L.3/Rev.1.

[2] This revised provision also addresses a comment made in document PCNICC/1999/WGRPE/DP.4.

(b) The notifications referred to in paragraph (a) shall contain the Prosecutor's conclusion, the reasons for the conclusion, as well as a full explanation of those reasons.

(c) In any case when the Prosecutor decides not to proceed with an investigation solely on the basis of article 53, paragraph 1 (c), he or she shall inform the Pre-Trial Chamber in writing promptly after making that decision.

The notification shall contain the Prosecutor's conclusion, the reasons for the conclusion, as well as a full explanation of those reasons.

(d)[3] The victims or their legal representatives shall be informed under the terms set forth in rules X to XX.

Rule 5.4
Notification of a decision by the Prosecutor not to prosecute

(a) When the Prosecutor decides that there is not a sufficient basis for prosecution under article 53, paragraph 2, he or she shall promptly inform the Pre-Trial Chamber in writing, together with the State or States that referred a situation under article 14, or the Security Council in respect of a situation covered by article 13, paragraph (b).

(b) The notifications referred to in paragraph (a) shall contain the Prosecutor's conclusion, the reasons for the conclusion, as well as the full explanation of those reasons.

(c)[4] The victims or their legal representative shall be informed under the terms set forth in rules X to XX.

Rules 5.5 to 5.8[5]
Procedure to be followed in the event of an application for review of the decision by the Prosecutor not to proceed with an investigation or not to prosecute

Rule 5.5
Request for review

(a) A request under article 53, paragraph 3, for a review of a decision by the Prosecutor not to initiate an investigation or not to prosecute, shall be made in writing, and be supported with reasons, within 90 days following the notification given under rules 5.3 or 5.4.

(b) The Pre-Trial Chamber may request the Prosecutor to transmit the information or documents in his or her possession, or summaries thereof, that the Chamber considers necessary for the conduct of the review.

[3] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[4] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[5] These rules are taken from document PCNICC/1999/L.3/Rev.1.

The Pre-Trial Chamber shall take such measures as are necessary to protect this information under articles 54, 72 and 93, and to protect the safety of witnesses and victims and members of their families under article 68, paragraph 5.

(c) When a State or the Security Council makes a request referred to in paragraph (a), the Pre-Trial Chamber may seek further observations from them.

(d) The victims or their legal representatives shall also be informed of this review and may take part in it subject to the conditions laid down in rules X to XX.[6]

They may, in accordance with article 19, paragraph 3, submit any observations on the jurisdiction of the Court or the admissibility of the case, if the request to the Pre-Trial Chamber concerns these issues.[7]

Rule 5.6
Decision of the Pre-Trial Chamber based on article 53, paragraph 3 (a)[8]

(a) A decision of the Pre-Trial Chamber, concurred in by a majority of the judges comprising the Chamber, shall contain reasons, as well as a full explanation of those reasons. It shall be communicated to all those who were involved in the review.

Where the Pre-Trial Chamber requests the Prosecutor to review, in whole or in part, his or her decision not to initiate an investigation or not to prosecute, the Prosecutor shall reconsider that decision as soon as possible.

(b) Once the Prosecutor has taken a final decision, he or she shall notify the Pre-Trial Chamber in writing. This notification shall contain the Prosecutor's conclusion, the reasons for the conclusion, as well as a full explanation of those reasons. It shall be communicated to all those who were involved in the review.

Rule 5.7
Review by the Pre-Trial Chamber pursuant to article 53, paragraph 3 (b)[9]

(a) The Pre-Trial Chamber may on its own initiative review a decision of the Prosecutor taken solely under article 53, paragraph 1 (c) or 2 (c), following the notification given under rule 5.3 or 5.4.

The Pre-Trial Chamber shall inform the Prosecutor of its intention to review his or her decision and shall establish a time-frame during which the Prosecutor may submit observations and other material.

In cases where a request has been submitted to the Pre-Trial Chamber by a State or by the Security Council, the submitter shall also be informed and may submit observations in accordance with rule 5.5.

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[6] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[7] This provision will need to be considered as part of a general discussion of the rules which may be required to underpin article 19.

[8] While undertaking a review under article 53, the Pre-Trial Chamber may have to address issues relating to article 19. In turn, this may raise issues about the right to appeal a decision under article 19.

[9] This provision replaces rule 5.7 in document PCNICC/1999/L.3/Rev.1.

(b)[10] The victims or their legal representatives shall also be informed of this review and may take part in it subject to the conditions laid down in rules X to XX.

Rule 5.8
Decision by the Pre-Trial Chamber based on article 53, paragraph 3(b)[11]

The decision by the Pre-Trial Chamber to review a decision taken by the Prosecutor solely under article 53, paragraph 1 (c) or 2 (c), concurred in by a majority of the judges comprising the Chamber, shall contain reasons, as well as a full explanation of those reasons. It shall be communicated to all those who were involved in the review.

When the Pre-Trial Chamber does not confirm the decision by the Prosecutor, he or she shall proceed with the investigation or prosecution.

Rules 5.9 to 5.14
Collection of evidence

Rule 5.9
Record of questioning in every case[12]

(a) A record shall be made of statements made by any person who is questioned in connection with an investigation or with proceedings. The record shall be signed by the person who records and conducts the questioning and by the person who is questioned and his or her counsel, if present and, where applicable, the Prosecutor or the judge who is present. The record shall note the date, time and place of, and all persons present during the questioning. It shall also be noted when someone has not signed the record as well as the reasons therefor.

(b) When the Prosecutor or national authorities question a person, due regard shall be given to article 55. When a person is informed of his or her rights under article 55, paragraph 2, the fact that this information has been provided shall be noted in the record.[13]

Rule 5.10
Recording of questioning in certain cases[14]

(a) Whenever the Prosecutor questions a person to whom article 55, paragraph 2, applies, or for whom a warrant of arrest or a summons to appear has been issued under article

[10] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[11] This rule replaces rule 5.8 in document PCNICC/1999/L.3/Rev.1.

[12] This rule replaces rule 57.1 in document PCNICC/1999/DP.7/Add.2.

[13] The provision may spell out who should give the information. This question could also be addressed in a rule underpinning Part 9 of the Statute.

[14] This rule replaces rule 57.2 in document PCNICC/1999/DP.7/Add.2, rule 59 in document PCNICC/1999/DP.1., rule 5.14 in document PCNICC/1999/L.3/Rev.1 and rule 55.3 in document PCNICC/1999/WGRPE/DP.18.

58, paragraph 7, the questioning shall be audio-recorded or video-recorded, in accordance with the following procedure:

(i) The person questioned shall be informed in a language he or she fully understands and speaks that the questioning is to be recorded or filmed and that the person concerned may object if he or she so wishes. The fact that this information has been provided and the response given by the person concerned shall be noted in the record. The person may, before replying, speak in private with his or her counsel, if present. If the person questioned refuses to be recorded, the procedure outlined in rule 5.9 shall be followed;

A waiver of the right to be questioned in the presence of counsel shall be documented in writing and, if possible, be audio-recorded or video-recorded;

(ii) In the event of an interruption in the course of questioning, the fact and the time of the interruption shall be recorded before the audio-recording or video-recording ends as well as the time of resumption of the questioning;

(iii) At the conclusion of the questioning, the person questioned shall be offered the opportunity to clarify anything he or she has said and to add anything he or she may wish. The time of conclusion of the questioning shall be noted;

(iv) The tape shall be transcribed as soon as practicable after the conclusion of the questioning and a copy of the transcript supplied to the person questioned together with a copy of the recorded tape or, if multiple recording apparatus was used, one of the original recorded tapes;

(v) The original tape or one of the original tapes shall be sealed in the presence of the person questioned and his or her counsel, if present, under the signature of the Prosecutor and the person questioned and the counsel, if present.

(b) The Prosecutor shall make every reasonable effort to record the questioning in accordance with paragraph (a). As an exception, a person may be questioned without the questioning being audio-recorded or video-recorded where the circumstances prevent such recording taking place. In this case, the reasons for not recording the questioning shall be stated in writing.

(c) When, pursuant to paragraph (a) (i) or (b) of the present rule, the questioning is not recorded, the person questioned shall be provided with a copy of his or her statement.

(d) The Prosecutor may choose to follow the procedure set forth in paragraphs (a), (b) and (c) of the present rule also when questioning other persons than those mentioned in paragraph (a) of the present rule.

The Pre-Trial Chamber may, in pursuance of article 56, paragraph 2, order that the procedure in paragraph (a) of the present rule be applied to the questioning of any person.

Rule 5.11
Collection of information regarding the state of health of the person concerned[15]

(a) The Pre-Trial Chamber may, on its own initiative or at the request of the Prosecutor, the person concerned or his or her counsel, order that a person having the rights

[15] This rule replaces rule 57.3 in document PCNICC/1999/DP.7/Add.2.

outlined in article 55, paragraph 2, be given a medical, psychological or psychiatric examination. In making its determination, the Pre-Trial Chamber shall consider the nature and purpose of the examination and whether the person consents to the examination.

(b) The Pre-Trial Chamber shall appoint one or more experts from the list of experts approved by the Registrar, or an expert approved by the Pre-Trial Chamber at the request of a party.

Rule 5.12
Evidence that cannot be reproduced[16]

(a) Upon being advised by the Prosecutor in accordance with article 56, paragraph 1 (a), the Pre-Trial Chamber shall designate one of its judges to decide if any necessary measures as referred to in article 56, paragraph 2, are called for in accordance with article 56, paragraph 1 (b).[17]

A judge so designated shall hold consultations without delay with the Prosecutor and, subject to the provisions of article 56, paragraph 1 (c), with the person who has been arrested or who has appeared before the Court pursuant to summons and his or her counsel, in order to determine the measures to be taken and the modalities of their implementation.

(b) A decision of the Pre-Trial Chamber to take measures pursuant to article 56, paragraph 3, shall be concurred in by a majority of its judges after consultations with the Prosecutor. As provided in article 56, paragraph 2 (e), a judge may be named to observe and make recommendations and orders with respect to such measures.

During the consultations, the Prosecutor may advise the Pre-Trial Chamber that intended measures could jeopardize the proper conduct of the investigation.

Rule 5.13
Collection of evidence in the territory of a State Party[18]

(a) Where the Prosecutor considers that article 57, paragraph 3 (d), applies, the Prosecutor may submit a written request to the Pre-Trial Chamber for authorization to take certain measures in the territory of the State Party in question.

(b) In arriving at its determination as to whether the request is well founded, the Pre-Trial Chamber shall take into account any views expressed by the State Party concerned. The Pre-Trial Chamber may, on its own initiative or at the request of the Prosecutor or the State Party concerned, decide to hold a hearing.[19]

(c) The Pre-Trial Chamber shall issue its decision in an order and shall state the reasons, based on the criteria set forth in article 57, paragraph 3 (d). The order may specify procedures to be followed in carrying out such collection of evidence.

(d) The Pre-Trial Chamber may review the order on its own motion or at the request of the Prosecutor or of the State Party concerned.

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[16] This rule replaces rule 57.4 in document PCNICC/1999/WGRPE/DP.5.

[17] The question was raised whether further provisions on the procedures for taking of evidence are needed or whether the provisions of article 56 are sufficient.

[18] This rule replaces rule 57.5 in document PCNICC/1999/WGRPE/DP.5.

[19] The issue of notification may need to be discussed further.

Rule 5.14
Collection of evidence at the request of the defence[20]

(a) The Pre-Trial Chamber shall issue an order under article 57, paragraph 3 (b), where it is satisfied:

(i) That such an order will facilitate the collection of evidence that is material to the proper determination of the issues being adjudicated, or otherwise necessary to the proper presentation of the person's defence; and

(ii) In case of cooperation, that sufficient information has been provided to meet the requirements for a request under Part 9.

(b) Before taking the decision, the Pre-Trial Chamber shall seek the views of the Prosecutor.

Rules 5.15 to 5.17
Procedures in respect of restriction and deprivation of liberty

Rule 5.15
Detention in the custodial State[21]

(a) The Court shall ensure that it is informed of the arrest of a person in response to a request made by the Court under article 89 or 92. Once so informed, the Court shall ensure that the person receives a copy of the arrest warrant issued by the Pre-Trial Chamber under article 58 and any relevant provisions of the Statute. The documents shall be made available in a language that the person fully understands and speaks.

(b) At any time after arrest, the person sought may make a request to the Pre-Trial Chamber for the appointment of legal counsel to assist with proceedings before the Court and the Pre-Trial Chamber shall consider such a request.

(c) A challenge of the issue whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (a) and (b), shall be made in writing to the Pre-Trial Chamber. The application shall set out the basis for the challenge. Upon receipt of the application, the Pre-Trial Chamber shall seek the views of the Prosecutor and thereafter decide on the application without delay.

(d) When the authority of the custodial State notifies the Pre-Trial Chamber that a request for release has been made by the person arrested, in accordance with article 59, paragraph 5, the Pre-Trial Chamber shall provide its recommendations within any time limit set by the custodial State.

When the Pre-Trial Chamber is informed that the person is granted interim release by the competent authority of the custodial State, the Pre-Trial Chamber shall inform the custodial State how and when it would like to receive periodic reports on the status of the interim release.

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[20] This rule replaces rule 57.6 in document PCNICC/1999/WGRPE/DP.5.

[21] This rule replaces rules 60.1 and 60.2 in document PCNICC/1999/DP.7/Add.1/Rev.1 and rule 55.4 (paras. 1–2) in document PCNICC/1999/WGRPE/DP.18.

Rule 5.16
Pre-trial detention at the seat of the Court[22]

(a) If the person surrendered to the Court makes an initial request for interim release pending trial, either upon first appearance in accordance with rule 5.18 or subsequently, the Pre-Trial Chamber shall decide upon the request without delay, after seeking the views of the Prosecutor.

(b) The Pre-Trial Chamber shall review its ruling on the release or detention of a person in accordance with article 60, paragraph 3, at least every 120 days and may do so at any time on the request of the person or the Prosecutor.

(c) After the first appearance, a request for interim release must be made in writing. The Prosecutor shall be given notice of such a request. The Pre-Trial Chamber shall decide after having received observations in writing of the Prosecutor and the detained person. The Pre-Trial Chamber may decide to hold a hearing, at the request of the Prosecutor, the detained person or on its own initiative. A hearing must be held at least once every year.

Rule 5.17
Conditional release[23]

(a) The Pre-Trial Chamber may set one or more conditions restricting liberty, including the following:

(i) The person may not travel beyond territorial limits set by the Pre-Trial Chamber without the explicit agreement of the Chamber;

(ii) The person may not go to certain places or associate with certain persons as specified by the Pre-Trial Chamber;

(iii) The person may not contact directly or indirectly victims and witnesses;

(iv) The person may not engage in certain professional activities;

(v) The person must reside at a particular address as specified by the Pre-Trial Chamber;

(vi) The person must respond when summoned by an authority or qualified person designated by the Pre-Trial Chamber;

(vii) The person must post bond or provide real or personal security or surety, for which the amount and the schedule and mode of payment shall be determined by the Pre-Trial Chamber;

(viii) The person must supply the Registrar with all identity documents, particularly his or her passport.

(b) At the request of the person concerned or the Prosecutor or on its own initiative, the Pre-Trial Chamber may at any time decide to amend the conditions set pursuant to paragraph (a).

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[22] This rule replaces rule 60.3 in document PCNICC/1999/DP.7/Add.1/Rev.1.

[23] This rule replaces rule 60.4 in document PCNICC/1999/DP.7/Add.1/Rev.1 and rule 55.4 (para. 3) in document PCNICC/1999/WGRPE/DP.18.

(c) Before imposing or amending any conditions restricting liberty, the Pre-Trial Chamber shall seek the views of the Prosecutor, the person concerned, any relevant State and, under the terms set forth in rules X to XX, the victims or their legal representatives.[24]

(d) If the Pre-Trial Chamber is convinced that the person concerned has failed to comply with one or more of the obligations imposed, it may, on such basis, at the request of the Prosecutor or on its own initiative, issue a warrant of arrest in respect of the person.

(e) When the Pre-Trial Chamber issues a summons to appear pursuant to article 58, paragraph 7, and intends to set conditions restricting liberty, it shall ascertain the relevant provisions of the national law of the State receiving the summons.

In a manner that is in keeping with the national law of the State receiving the summons, the Pre-Trial Chamber shall proceed in accordance with paragraphs (a), (b) and (c). If the Pre-Trial Chamber receives information that the person concerned has failed to comply with conditions imposed, it shall proceed in accordance with paragraph (d).

Rules 5.18 to 5.23
Proceedings with regard to the confirmation of charges

Rule 5.18
Proceedings before the confirmation hearing[25]

(a) A person subject to a warrant of arrest or a summons to appear under article 58, shall appear before the Pre-Trial Chamber, in the presence of the Prosecutor, promptly upon arriving at the Court. Subject to the provisions of articles 60 and 61, the person shall enjoy the rights set forth in article 67.

At this first appearance, the Pre-Trial Chamber shall set the date on which it intends to hold a hearing to confirm the charges. It shall ensure that this date, and any postponements under paragraph (e) of this rule, are made public.

(b) In accordance with article 61, paragraph 3, the Pre-Trial Chamber shall take the necessary decisions regarding disclosure between the Prosecutor and the person in respect of whom a warrant of arrest or a summons to appear has been issued. During disclosure the person concerned may be assisted or represented by the counsel of his or her choice or by a counsel assigned to him or her.

For that purpose, the Pre-Trial Chamber shall hold status conferences to ensure that disclosure takes place under satisfactory conditions. For each case, a pre-trial judge shall be appointed to organize such status conferences, on his or her own motion, or at the request of the Prosecutor or the person concerned.

All evidence disclosed between the Prosecutor and the person concerned for the purposes of the confirmation hearing shall be communicated to the Pre-Trial Chamber.

(c) The Prosecutor shall provide to the Pre-Trial Chamber and to the person no later than 30 days before the date of the confirmation hearing, a detailed description of the charges together with a list of the evidence which he or she intends to present at the hearing.

[24] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[25] This rule replaces rules 5.9, 5.11 and 5.12 of document PCNICC/1999/L.3/Rev.1.

Where the Prosecutor intends to amend the charges pursuant to article 61, paragraph 4, he or she shall notify the Pre-Trial Chamber and the person no later than 15 days before the date of the hearing.

Where the Prosecutor intends to present new evidence at the hearing, he or she shall provide the Pre-Trial Chamber and the person with a list of that evidence.[26]

(d) If the person intends to present evidence under article 61, paragraph 6, he or she shall provide a list of that evidence to the Pre-Trial Chamber no later than 15 days before the date of the hearing. The Pre-Trial Chamber shall transmit the list to the Prosecutor without delay. The person shall provide a list of evidence that he or she intends to present in response to any amended charges or a new list of evidence provided by the Prosecutor.

(e) The Prosecutor or the person may ask the Pre-Trial Chamber to postpone the date of the confirmation hearing. The Pre-Trial Chamber may also, on its own motion, decide to postpone the hearing.[27]

The Pre-Trial Chamber shall not take into consideration charges and evidence presented after the time limit, or any extension thereof, has expired.

(f) The Prosecutor and the person may lodge written submissions with the Pre-Trial Chamber, on points of fact and on law, including grounds for excluding criminal responsibility set forth in article 31, paragraph 1, no later than three days before the date of the hearing. A copy of these submissions shall be transmitted immediately to the Prosecutor or the person, as the case may be.

(g) The Registry shall create and maintain a record of the proceedings before the Pre-Trial Chamber, including all documents transmitted to the Chamber pursuant to this rule. The record may be consulted by the Prosecutor and by the person.

(h)[28] Victims and their legal representatives, who have been given access to the proceedings by virtue of article 68 and in accordance with the conditions laid down in rules X to XX, shall be notified of the date of the confirmation hearing and of any postponement thereof.

They may consult the record of the proceedings put together in accordance with paragraph (g) of this rule. They may lodge written submissions with the Pre-Trial Chamber no later than 15 days before the date of the hearing.

They may also ask to intervene during the hearing, by addressing a request to that effect to the Pre-Trial Chamber no later than 15 days before the hearing. The Pre-Trial Chamber shall rule on the request after receiving the observations of the Prosecutor and the person.

(i)[29] States wishing to challenge the jurisdiction of the Court or the admissibility of the case before the Pre-Trial Chamber at the time of the confirmation hearing shall make a request to that effect no later than 30 days before the date of the hearing.

States may request the Pre-Trial Chamber to postpone the date of the hearing.

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[26] Access to evidence referred to in the list shall be governed by the rules concerning disclosure, in particular those rules relating to the preparation of the confirmation hearing.

[27] The question whether and which time limits can be enlarged or reduced by the Court will also be addressed in the context of proposal of general provisions about time limits.

[28] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[29] These provisions will need to be considered as part of a general discussion of the rules which may be required to underpin article 19.

They shall lodge their written submissions with the Registry no later than 15 days before the date of the hearing. Such submissions shall be joined to the record of the proceedings and be transmitted to the Prosecutor, the person and the victims or their legal representatives, in accordance with rules X to XX.

Rule 5.19
Proceedings at the confirmation hearing in the presence of the person charged[30]

(a) The President of the Pre-Trial Chamber shall ask the officer of the Registry assisting the Chamber to read out the charges as presented by the Prosecutor. The President shall determine how the hearing is to be conducted and, in particular, may establish the order and the conditions in which he or she intends the parties to explain the evidence contained in the record of the proceedings.

(b) Before hearing the matter on the merits, the President of the Pre-Trial Chamber shall ask:

(i) The Prosecutor and the person, and any representatives of States present, whether they intend to raise objections or make observations concerning the jurisdiction of the Court or the admissibility of the case;

(ii) The Prosecutor and the person whether they intend to raise objections or make observations concerning an issue related to the proper conduct of the proceedings prior to the confirmation hearing; and

(iii)[31] The victims or their legal representatives whether they have any observations to make.

At no subsequent point may the objections and observations made under (ii) above be raised or made again.

(c) If the objections or observations referred to in paragraph (b) of this rule are presented, the President of the Pre-Trial Chamber shall invite those referred to in paragraph (b) of this rule to present their arguments, in the order which he or she shall establish. The person shall have the right to reply.

If the objections raised or observations made are those referred to in paragraph (b) (i) above, the Pre-Trial Chamber shall separate these issues, adjourn the confirmation hearing and render a decision on the issues raised.

If the objections raised or observations made are those referred to in paragraph (b) (ii) above, the Pre-Trial Chamber shall decide whether to join the issue raised to the examination of the charges and the evidence, or to separate them, in which case it shall adjourn the confirmation hearing and render a decision on the issues raised.

(d)[32] During the hearing on the merits, the Prosecutor and the person shall present their arguments in accordance with article 61, paragraphs 5 and 6.

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[30] This rule is a reproduction of rule 5.10 of document PCNICC/1999/L.3/Rev.1.

[31] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[32] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

The President of the Pre-Trial Chamber may also invite victims and their legal representatives to speak, if they have been allowed to participate in the hearing. In this case, the person and the Prosecutor shall always have the right to reply after the victims or their legal representative.

Subject to the provisions of article 61, article 69 shall apply *mutatis mutandis* at the confirmation hearing. The Pre-Trial Chamber shall permit the victims participating in the hearing, the Prosecutor and the person, in that order, to make final observations. The President of the Pre-Trial Chamber may, in exceptional cases, authorize anyone participating in the proceedings to speak again, in which case the person shall have the right to reply.

Rule 5.20
Measures to ensure the presence of the person concerned at the confirmation hearing[33]

(a) When a warrant of arrest or summons to appear in accordance with article 59, paragraph 7, has been issued for a person by the Pre-Trial Chamber and the person is arrested or served with the summons, the Pre-Trial Chamber shall ensure that the person is notified of the provisions of article 61, paragraph 2.

(b) The Pre-Trial Chamber may hold consultations with the Prosecutor, at the request of the latter or on its own initiative, in order to determine whether there is cause to hold a hearing on confirmation of charges under the conditions set forth in article 61, paragraph 2 (b). When the person concerned has a counsel known to the Court, the consultations shall be held in the presence of the counsel unless the Pre-Trial Chamber decides otherwise.

(c) The Pre-Trial Chamber shall ensure that a warrant of arrest for the person concerned has been issued and, if the warrant of arrest has not been executed within a reasonable period of time after the issuance of the warrant, that all reasonable measures have been taken to locate and arrest the person.

Rule 5.21
Waiver by the person concerned of the right to be present at the confirmation hearing[34]

(a) If the person concerned is available to the Court but wishes to waive the right to be present at the hearing on confirmation of charges, he or she shall submit a written request to the Pre-Trial Chamber, which may then hold consultations with the Prosecutor and the person concerned, assisted or represented by his or her counsel.

(b) A confirmation hearing pursuant to article 61, paragraph 2 (a), shall only be held when the Pre-Trial Chamber is satisfied that the person concerned understands the right to be present at the hearing and the consequences of waiving this right.

(c) The Pre-Trial Chamber may authorize the person concerned to observe the hearing from outside the courtroom.

[33] This rule replaces rule 62.1 in document PCNICC/1999/DP.8/Add.2/Rev.1.

[34] This rule replaces rule 62.2 in document PCNICC/1999/DP.8/Add.2/Rev.1.

(d) The waiving of the right of the person concerned to be present at the hearing does not prevent the Pre-Trial Chamber from receiving written observations on issues before the Chamber.

Rule 5.22
Decision to hold the confirmation hearing in the absence of the person concerned[35]

(a) After holding consultations under rules 5.20 and 5.21, the Pre-Trial Chamber shall decide whether there is cause to hold a hearing on confirmation of charges in the absence of the person concerned, and in that case, whether the person may be represented by counsel. The Pre-Trial Chamber shall, when appropriate, set a date for the hearing and make the date public.

The Pre-Trial Chamber may, before taking the decision, invite observations from the victims or their legal representatives, in accordance with rules X to XX.[36]

The decision of the Pre-Trial Chamber shall be notified to the Prosecutor and, if possible, to the person concerned or his or her counsel, and to the victims or their legal representatives, if they have been allowed to participate in the proceedings pursuant to rules X to XX.[37]

(b) If the Pre-Trial Chamber decides not to hold a hearing on confirmation of charges in the absence of the person concerned, and the person is not available to the Court, the confirmation of charges may not take place until the person is available to the Court. The Pre-Trial Chamber may review its decision at any time, at the request of the Prosecutor or on its own initiative.

If the Pre-Trial Chamber decides not to hold a hearing on confirmation of charges in the absence of the person concerned, and the person is available to the Court, it shall order the person to appear.

Rule 5.23
Confirmation hearing in the absence of the person concerned[38]

(a) The provisions of rules 5.18 and 5.19 apply *mutatis mutandis* to the preparation for and holding of a hearing on confirmation of charges in the absence of the person concerned.

If the Pre-Trial Chamber has determined that the person concerned shall be represented by counsel, the counsel shall have the opportunity to exercise the rights recognized to the person concerned.

(b) When the person who has fled is subsequently arrested and the Court has confirmed the charges upon which the Prosecutor intends to pursue the trial, the person

[35] This rule replaces rule 62.3 in document PCNICC/1999/DP.8/Add.2/Rev.1.

[36] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[37] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[38] This rule replaces rule 62.4 in document PCNICC/1999/DP.8/Add.2/Rev.1.

charged shall be committed to the Trial Chamber established under article 69, paragraph 11. The person charged may request in writing that the Trial Chamber refer issues to the Pre-Trial Chamber that are necessary for the Chamber's effective and fair functioning in accordance with article 64, paragraph 4.

Rules 5.24 to 5.27
Closure of the pre-trial phase

Rule 5.24
Procedure in the event of different decisions on multiple charges[39]

If the Pre-Trial Chamber is ready to confirm some of the charges but adjourns the hearing on other charges under article 61, paragraph 7 (c), it may decide that the committal of the person concerned to the Trial Chamber on the charges that it is ready to confirm shall be deferred pending the continuation of the hearing.

The Pre-Trial Chamber may then establish a time-frame during which the Prosecutor may proceed in accordance with article 61, paragraph 7 (c) (i) or (ii).

Rule 5.25
Amendment of the charges[40]

(a) If the Prosecutor seeks to amend charges already confirmed before the trial has begun, in accordance with article 61, paragraphs 9 and 11, the Prosecutor shall make a written request to the Pre-Trial Chamber and shall so notify the accused and the victims or their legal representative, if they have been allowed to participate in the proceedings under rules X to XX.[41]

(b) Before deciding whether to authorize the amendment, the Pre-Trial Chamber may request the accused and the Prosecutor to submit written observations on certain issues of fact or law. The victims and their legal representatives may also submit observations in accordance with rules X to XX, if they have been allowed to participate in the proceedings.[42]

(c) If the Pre-Trial Chamber determines that the amendments proposed by the Prosecutor constitute additional or more serious charges, it shall proceed, as appropriate, in accordance with rules 5.18 and 5.19 or rules 5.20 to 5.23.

[39] This rule replaces rule 63 in document PCNICC/1999/DP.8/Add.1/Rev.1.

[40] This rule replaces rule 64 in document PCNICC/1999/DP.8/Add.1/Rev.1.

[41] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[42] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

Rule 5.26
Notification of the decision on the confirmation of charges[43]

The decision of the Pre-Trial Chamber on the confirmation of charges and the committal of the accused to the Trial Chamber shall be notified, if possible, to the person concerned and his or her counsel and, if applicable, to the victims or their legal representatives.[44]

Such a decision and the record of the proceedings of the Pre-Trial Chamber shall be transmitted to the Presidency.

Rule 5.27
Constitution of the Trial Chamber[45]

When the Presidency constitutes and refers the case to the Trial Chamber, the Presidency shall transmit the decision of the Pre-Trial Chamber and the record of the proceedings to the Trial Chamber. The Presidency may also refer the case to a previously constituted Trial Chamber.

Rules 5.28 to 5.34
Disclosure

N.B. Following the provisional structure of document PCNICC/1999/L.3/Rev.1, the rules below are given numbers referring to Part 5 of the Statute. Since the provisions on disclosure are primarily of a general nature, they may better be placed in a separate chapter of the Rules of Procedure and Evidence. This question will be addressed at a later stage when the general structure of the Rules of Procedure and Evidence is discussed.

Rule 5.28
Pre-trial disclosure relating to prosecution witnesses[46]

(a) The Prosecutor shall provide the defence with the names of witnesses whom the Prosecutor intends to call to testify and copies of any prior statements made by those witnesses. This shall be done sufficiently in advance to enable the adequate preparation of the defence.[47]

(b) The Prosecutor shall subsequently advise the defence of the names of any additional prosecution witnesses and provide copies of their statements when the decision is made to call those witnesses.

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[43] This rule replaces rule 65.1 in document PCNICC/1999/DP.8/Add.1/Rev.1.

[44] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[45] This rule replaces rule 65.2 in document PCNICC/1999/DP.8/Add.1/Rev.1.

[46] This rule replaces rule 5.15 in document PCNICC/1999/L.3/Rev.1.

[47] This rule may need to be revised after the comprehensive discussion on victims, in particular on the issue of non-disclosure of the identity of witnesses.

(c) The statements of prosecution witnesses shall be made available in a language which the accused fully understands and speaks.

(d) This rule is subject to the protection and privacy of victims and witnesses and the protection of confidential information as provided for in the Statute and rule 5.32.

Rule 5.29
Inspection of material in possession or control of the Prosecutor[48]

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rule 5.32, permit the defence to inspect any books, documents, photographs and tangible objects in the Prosecutor's possession or control which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.[49]

Rule 5.30
Disclosure by the defence[50]

(a) The defence shall notify the Prosecutor of its intent to:

(i) Plead the existence of an alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names of witnesses and any other evidence upon which the accused intends to rely to establish the alibi; or

(ii) Raise a ground for excluding criminal responsibility provided for in article 31, paragraph 1; in which case the notification shall specify the names of witnesses and any other evidence upon which the accused intends to rely to establish the ground.

(b) With due regard to time limits set forth in other rules, notification under paragraph (a) of this rule shall be given sufficiently in advance to enable the Prosecutor to prepare adequately and to respond. The Chamber of the Court dealing with the matter may grant the Prosecutor an adjournment to address the issue raised by the defence.

(c) Failure of the defence to provide notice under this rule shall not limit its right to raise matters dealt with in paragraph (a) and to present evidence.

(d) This rule does not prevent a Chamber of the Court from ordering disclosure of any other evidence.

[48] This rule replaces rule 5.16 in document PCNICC/1999/L.3/Rev.1.

[49] This rule relates only to the inspection of material held by the Prosecutor. The issue of whether the Prosecutor should have access to material held and disclosed to be introduced into evidence by the defence also needs consideration.

[50] This rule replaces rule 5.17 in document PCNICC/1999/L.3/Rev.1.

Rule 5.31
Procedures for raising a ground for excluding criminal responsibility under article 31, paragraph 3[51]

(a) The defence shall give notice to both the Trial Chamber and the Prosecutor if it intends to raise a ground for excluding criminal responsibility under article 31, paragraph 3. This shall be done sufficiently in advance of the commencement of the trial to enable the Prosecutor to prepare adequately for trial.

(b) Following notice given under paragraph (a) of this rule, the Trial Chamber shall hear both parties before deciding whether the defence can plead the ground for excluding criminal responsibility.

(c) If the defence is permitted to plead the ground, the Trial Chamber may grant the Prosecutor an adjournment to address the ground raised by the defence.

Rule 5.32
Restriction on disclosure[52]

(a) Reports, memoranda or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case are not subject to disclosure.

(b) Where material or information is in the possession or control of the Prosecutor which must be disclosed in accordance with the Statute, but disclosure may prejudice further or ongoing investigations, the Prosecutor may apply to the Chamber of the Court dealing with the matter for a ruling as to whether the material or information must be disclosed to the defence. The matter shall be heard on an *ex parte* basis by the Chamber. However, the Prosecutor may not introduce such material or information into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused.

(c) Where material or information is in the possession or control of the Prosecutor which is withheld under article 68, paragraph 5, such material and information may not be subsequently introduced into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused.

(d) Where material or information is in the possession or control of the defence which is subject to disclosure, it may be withheld in circumstances which would allow the Prosecutor to rely on article 68, paragraph 5, and a summary thereof submitted instead. Such material and information may not be subsequently introduced into evidence during the confirmation hearing or the trial without adequate prior disclosure to the Prosecutor.

(e) Where steps have been taken to ensure the confidentiality of information, in accordance with articles 54, 57, 64, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, such information shall not be disclosed, except in accordance with those articles.

(f) Where material or information is in the possession or control of the Prosecutor which is protected under article 54, paragraph 3 (e), the Prosecutor may not subsequently

[51] This rule replaces rule 5.18 in document PCNICC/1999/L.3/Rev.1.

[52] This rule replaces rules 5.14 and 5.19 in document PCNICC/1999/L.3/Rev.1. As a matter of drafting, this rule could be separated in rules dealing with (1) restriction of disclosure, (2) disclosure of previously held material and (3) material and information protected under article 54, paragraph 3 (e).

introduce such material or information into evidence without the prior consent of the provider of the material or information and adequate prior disclosure to the accused.

(g) If the Prosecutor introduces material or information protected under article 54, paragraph 3 (e), into evidence, the Chamber of the Court dealing with the matter may not order the production of additional evidence received from the provider of the initial material or information, nor may that Chamber for the purpose of obtaining such additional evidence itself summon the provider or a representative of the provider as a witness or order their attendance.

(h) If the Prosecutor calls a witness to introduce in evidence any material or information which has been protected under article 54, paragraph 3 (e), the Chamber of the Court dealing with the matter may not compel that witness to answer any question relating to the material or information or its origin, if the witness declines to answer on grounds of confidentiality.

(i) The right of the accused to challenge evidence which has been protected under article 54, paragraph 3 (e), shall remain unaffected subject only to the limitations contained in paragraphs (g) and (h) of the present rule.

(j) The Chamber of the Court dealing with the matter may order an application by the defence that, in the interest of justice, material or information in the possession of the accused which has been provided to the accused under the same conditions as set forth in article 54, paragraph 3 (e), and is to be introduced into evidence shall be subject *mutatis mutandis* to paragraphs (f), (g) and (h) of the present rule.

(k) The Chamber of the Court dealing with the matter shall, on its own motion or at the request of the Prosecutor, the accused or any State, take the necessary steps to ensure the confidentiality of information, in accordance with articles 54, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, particularly by authorizing the non-disclosure of their identity.[53]

Rule 5.33
Ruling on exculpatory evidence[54]

The Prosecutor may request as soon as practicable a hearing on an *ex parte* basis before the Chamber of the Court dealing with the matter for the purpose of obtaining a ruling under article 67, paragraph 2.[55]

[53] This rule may need to be revised after the comprehensive discussion on victims, in particular on the issue of non-disclosure of the identity of witnesses.

[54] This rule is a reproduction of rule 5.20 in document PCNICC/1999/L.3/Rev.1.

[55] Consideration should be given to setting forth procedures which protect the accused's rights to disclosure of exculpatory evidence without compromising the existing obligations as to confidentiality, and the safety of persons and the investigation (see rule 5.32). Furthermore, consideration should be given to whether provisions on consequences of the failure to disclose exculpatory evidence are needed.

Rule 5.34
Continuing requirements to disclose[56]

If either party intends to present additional evidence or material, whether previously or newly discovered, which should have been disclosed earlier pursuant to the Statute or the Rules on Procedure and Evidence, that party shall promptly notify the other party, and the Chamber of the Court dealing with the matter, of the existence of the additional evidence or material.

Part 6 of the Rome Statute
The Trial

I. Rules 6.1 to 6.9
Evidence

Rule 6.1
General provisions

(a) A Chamber of the Court shall have the authority, in accordance with the discretion described in article 64, paragraph 9, to assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69.

(b) A Chamber of the Court shall rule on an application of a party or on its own motion, made under article 64, subparagraph 9 (a), concerning admissibility when it is based on the grounds set out in article 69, paragraph 7.

(c) Without prejudice to article 66, paragraph 3, a Chamber of the Court shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular crimes of sexual violence.

(d) The rules of evidence set forth in rules (x) to (xx), together with article 69 of the Statute, shall apply in proceedings before all Chambers of the Court.

(e) The Chambers of the Court shall not apply national laws governing evidence, other than in accordance with article 21.

Rule 6.2
Procedure relating to the relevance or admissibility of evidence

(a) An issue relating to relevance or admissibility must be raised at the time when the evidence is submitted to a Chamber of the Court. Exceptionally, when those issues were not known at the time when the evidence was submitted, it may be raised immediately after the issue has become known. The Chamber may request that the issue be raised in writing. The written motion shall be communicated by the Court to all those who participate in the proceedings, unless otherwise decided by the Court.

[56] This rule is a reproduction of rule 5.21 in document PCNICC/1999/L.3/Rev.1.

(b) A Chamber shall give reasons, which shall be placed on the record, for any rulings it makes on evidentiary matters, unless the reasons are otherwise obvious within the context of the proceedings.

(c) Evidence ruled irrelevant or inadmissible s'ıall not be considered by the Chamber.

Rule 6.3
Agreements as to evidence

The Prosecutor and the defence may agree that an alleged fact, which is contained in the charges, the contents of a document, the expected testimony of a witness or other evidence is not contested and, accordingly, a Chamber of the Court may consider such alleged fact as being proven, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims.

Rule 6.4
Privileged communications and information

(a) Without prejudice to paragraph 1 (b) of article 67, communications made in the context of the professional relationship between a person and his or her legal counsel shall be regarded as privileged, and consequently not subject to disclosure, unless:

(i) The person consents in writing to such disclosure; or

(ii) The person voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure.

(b) Having regard to rule 6.1 (e), communications made in the context of a class of professional or other confidential relationships shall be regarded as privileged, and consequently not subject to disclosure, under the same terms as subparagraphs (i) and (ii) of paragraph (a), if a Chamber of the Court decides in respect of that class that:

(i) Communications occurring within that class of relationship are made in the course of a confidential relationship producing a reasonable expectation of privacy and non-disclosure;

(ii) Confidentiality is essential to the nature and type of relationship between the person and the confidant; and

(iii) Recognition of the privilege would further the objectives of the Statute and the Rules of Procedure and Evidence.

In making a decision, the Court shall give particular regard to recognizing as privileged those communications made in the context of the professional relationship between a person and his or her medical doctor, psychiatrist, psychologist or counsellor, in particular those related to or involving victims, or between a person and a member of a religious clergy; and in the latter case, the Court shall recognize as privileged those communications made in the context of a sacred confession where it is an integral part of the practice of that religion.

(c) The Court shall regard as privileged, and consequently not subject to disclosure, including by way of testimony of any present or past ICRC official or employee, any information, documents or other evidence which came into the possession of the

International Committee of the Red Cross (ICRC) in the course, or as a consequence of, the performance by the ICRC of its functions under the Statutes of the International Red Cross and Red Crescent Movement, unless:

(i) After consultations undertaken pursuant to paragraph (e), the ICRC does not object in writing to such disclosure, or otherwise has waived this privilege; or

(ii) Such information, documents or other evidence is contained in public statements and documents of the ICRC.

(d) Nothing in paragraph (c) shall affect the admissibility of the same evidence obtained from a source other than the ICRC and its officials or employees when such evidence has also been acquired by this source independently of the ICRC and its officials or employees.

(e) If the Court determines that ICRC information, documents or other evidence are of great importance for a particular case, consultations shall be held between the Court and the ICRC in order to seek to resolve the matter by cooperative means, bearing in mind the circumstances of the case, the relevance of the evidence sought, whether the evidence could be obtained from a source other than the ICRC, the interests of justice and of victims, and the performance of the Court's and the ICRC's functions.[57]

Rule 6.5
Evidence in cases of sexual violence

In cases of sexual violence:

(a) No consent exists where the victim:[58]

(i) Has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, abuse of power or other coercive circumstances; or

(ii) Reasonably believed that if the victim did not submit, another person might be so subjected, threatened or put in fear.

(b) In cases where the Trial Chamber is not satisfied that the conditions in subparagraph (a) exist, the Trial Chamber shall satisfy itself in camera that the evidence is highly relevant and credible before evidence of the victim's consent is admitted.

N.B. Consideration needs to be given to the issues concerning evidence regarding prior sexual conduct, as contained in PCNICC/1999/DP.1, rule 101 (iv).

Rule 6.6
Amicus curiae and other forms of submission

(a) At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person

[57] The wording of this paragraph needs further consideration in order to determine how to reach the final decision.

[58] This rule will be considered in the November/December 1999 session of the Preparatory Commission taking into account the results of discussions on sexual offences in the Working Group on Elements of Crimes.

to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

(b) A brief submitted under paragraph (a) shall be filed with the Registrar, who shall provide copies to the Prosecutor, the defence and the victims or their legal representatives when they participate in the proceedings pursuant to rules (x) to (xx). The Chamber shall determine what time limits shall apply to the filing of such briefs.

(c) The Prosecutor, the defence and the victims or their legal representatives when they participate in the proceedings pursuant to rules (x) to (xx), shall have the opportunity to respond to these observations submitted to the Court under paragraph (a).

Rule 6.7
Solemn undertaking[59]

(a) Except as described in paragraph (b), every witness shall, in accordance with article 69, paragraph 1, make the following solemn undertaking before testifying:

"I solemnly declare that I will speak the truth, the whole truth and nothing but the truth."

(b) A person under the age of 18 or a person whose judgement has been impaired and who, in the opinion of the Chamber of the Court, does not understand the nature of a solemn undertaking may be allowed to testify without this solemn undertaking if the Chamber considers that the person is able to describe matters of which he or she has knowledge and that the person understands the meaning of the duty to speak the truth.

(c) Before testifying, the witness shall be informed of the offence defined in article 70.1 (a).

Rule 6.8
Findings and evidence from other proceedings

(a) Without prejudice to the rights of an accused under article 67, a Chamber may, at the request of the Prosecutor, the defence or victims or their legal representatives when they participate in the proceedings pursuant to rules (x) to (xx), admit as evidence:

(i) With the consent of the defence, the specific factual findings of a Chamber from other proceedings;

(ii) Documentary or other physical evidence from other proceedings of a Chamber;

where such evidence is relevant to matters at issue in the current proceedings, and all appeals, if any, in the other proceedings have been completed.

(b) The Chamber shall hear the participants to the proceedings prior to admitting any such evidence.

[59] The need for a rule providing for a solemn undertaking for interpreters and translators should be considered in connection with Part 4 of the Statute, in particular article 44(3).

Rule 6.9
Self-incrimination by a witness

(a) A witness[60] may object to making any statement that might tend to incriminate him or her. However, the Chamber may direct the witness to answer the question or questions, after assuring the witness that the evidence provided in response to the questions:

(i) Will be kept confidential and will not be disclosed to the public or any State; and

(ii) Will not be used either directly or indirectly against that person in any subsequent prosecution by the Court, except under articles 70 and 71.

(b) Before giving such an assurance, the Chamber shall seek the views of the Prosecutor, *ex parte*, to determine if the assurance should be given to this particular witness.

(c) In determining whether to direct the witness to answer, the Chamber shall consider:

(i) The importance of the anticipated evidence;

(ii) Whether the witness would be providing unique evidence;

(iii) The nature of the possible incrimination, if known; and

(iv) The sufficiency of the protections for the witness, in the particular circumstances.

(d) If the Chamber determines it would not be appropriate to provide an assurance to this witness, it shall not direct the witness to answer the question. If the Chamber determines not to direct the witness to answer, it may still continue the questioning of the witness on other matters.

(e) In order to give effect to the assurance, the Chamber shall:

(i) Order that the evidence of the witness be given in camera;

(ii) Order that the identity of the witness and the content of the evidence given shall not be disclosed, in any manner, and provide that the breach of any such order will be subject to sanction under article 71;

(iii) Specifically advise the Prosecutor, the accused, the defence counsel and any Court staff present of the consequences of a breach of the order under subparagraph (ii);

(iv) Order the sealing of any record of the proceedings; and

(v) Use protective measures with respect to any decision of the Court to ensure that the identity of the witness and the content of the evidence given are not disclosed.

(f) Where the Prosecutor is aware that the testimony of any witness may raise issues with respect to self-incrimination, he or she shall request an in camera hearing and advise the Chamber of this, in advance of the testimony of the witness. The Chamber may impose the measures outlined in subparagraph (e) for all or a part of the testimony of that witness.

[60] The issue of the application of the protection to the incrimination of family members still has to be discussed.

(g) The accused, defence counsel or the witness may advise the Prosecutor or the Chamber that the testimony of a witness will raise issues of self-incrimination before the witness testifies and the Chamber may take the measures outlined in subparagraph (f).[61]

II. Rules 6.10 to 6.25 and 6.26 to 6.X
The Trial

Rule 6.10
Status conferences

(a) Promptly after it is constituted, the Trial Chamber shall hold a status conference in order to set the date of the trial. The Trial Chamber, on its own motion, or at the request of the Prosecutor or the defence, may postpone the date of the trial. The Trial Chamber shall notify the trial date to all those who participated in the proceedings including, if applicable, the victims or the legal representatives of the victims.[62] It shall ensure that this date and any postponements are made public (see rule 5.18 (a)).

(b) In order to facilitate the fair and expeditious conduct of the proceedings, the Trial Chamber may confer with the parties by holding status conferences as necessary; and in doing so shall exercise the relevant powers of the Pre-Trial Chamber.

Rule 6.11
Motions challenging admissibility or jurisdiction

(a) Prior to the commencement of the trial, challenges to the jurisdiction of the Court or the admissibility of the case pursuant to article 19, paragraph 2, must be submitted in writing. The Trial Chamber shall transmit the motion to all those who participated in the proceedings including, if applicable, the victims or the legal representatives of victims. Participants may respond by written observations to the motion within a time period determined by the Trial Chamber.[63] The Trial Chamber may decide to hold a hearing before ruling on any such motions.

(b) Challenges to the jurisdiction of the Court or the admissibility of the case at the commencement of the trial, or subsequently with the leave of the Court, shall be dealt with by the Presiding Judge[64] of the Trial Chamber in accordance with the procedure specified in rule 5.19.

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[61] A rule should be included under Part 9 indicating that when the Court seeks assistance from a State to facilitate the voluntary appearance of a witness, the Court should specify in the request that the witness be advised of this rule on self-incrimination.

[62] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[63] Ibid.

[64] See PCNICC/1999/WGRPE/DP.9 in relation to proposals concerning the functions of the "Reporting Judge".

Rule 6.12
Other motions

(a) Prior to the commencement of the trial, the Trial Chamber on its own motion, or at the request of the Prosecutor or the defence, may rule on any issue concerning the conduct of the proceedings. Any request from the Prosecutor or the defence shall be in writing and, unless the request is for an *ex parte* procedure, served on the other party. For all requests other than those submitted for an *ex parte* procedure, the other party shall have the opportunity to file a response.

(b) At the commencement of the trial, the Trial Chamber shall ask the Prosecutor and the defence whether they have any objections or observations concerning the conduct of the proceedings which have arisen since the confirmation hearings. Such objections or observations may not be raised or made again on a subsequent occasion, without leave of the Trial Chamber.

(c) After the commencement of the trial, the Trial Chamber on its own motion, or at the request of the Prosecutor or the defence, may rule on issues that arise during the course of the trial.

Rule 6.13
Medical examination of the accused

(a) The Trial Chamber may, for the purpose of discharging its obligations under article 64, paragraph 8 (a), or for any other reasons, or at the request of a party, order a medical, psychiatric or psychological examination of the accused, under the conditions set forth in rule 5.11.

(b) The Trial Chamber shall place its reasons for any such order on the record.

(c) The Trial Chamber shall appoint one or more experts from the list of experts approved by the Registrar, or an expert approved by the Trial Chamber at the request of a party.

(d) Where the Trial Chamber is satisfied that the accused is unfit to stand trial it shall order that the trial is adjourned. The Trial Chamber may, on its own motion or at the request of the Prosecution or the defence, review the case of the accused. In any event the case shall be reviewed every 120 days. If necessary the Trial Chamber may order further examinations of the accused. When the Trial Chamber is satisfied that the accused has become fit to stand trial it shall proceed in accordance with rule [6.10].

Rule 6.14
Instruments of restraint

Personal instruments of restraint shall not be used except as a precaution against escape, for the protection of the accused and others or for other security reasons, and shall be removed when the accused appears before a Chamber.

Rule 6.15
Joint and separate trials

(a) Persons accused jointly shall be tried together unless the Court, on its own motion or at the request of the Prosecutor or the defence, orders that separate trials are necessary, in order to avoid serious prejudice to the accused, to protect the interests of justice or because a person jointly accused has made an admission of guilt and has been convicted in accordance with article 65, paragraph 2.

(b) In joint trials, each accused shall be accorded the same rights as if such accused were being tried separately.

Rule 6.16
Record of the trial proceedings

(a) In accordance with article 64, paragraph 10, the Registrar shall cause to be made, and preserve, a full and accurate record of all proceedings, including transcripts, audio and video recordings and other means of capturing sound or image.

(b) A Trial Chamber may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist.

(c) The Trial Chamber may authorize persons, other than the Registrar, to take photographs, video and audio recordings and other means of capturing the sound or image of the trial.

Rule 6.17
Custody of evidence

The Registrar shall retain and preserve, as necessary, all the evidence and other materials offered during the hearing, subject to any order that the Trial Chamber shall make.

Rule 6.18
Directions for the conduct of the proceedings and testimony

(a) If the Presiding Judge does not give directions under article 64, paragraph 2, the Prosecutor and the defence shall agree on the order and manner in which the evidence shall be submitted to the Trial Chamber. If no agreement can be reached, the Presiding Judge of the Trial Chamber shall issue directions.

(b) A party that submits evidence in accordance with article 64, paragraph 3, by way of a witness, has the right to question that witness. The Prosecution and the defence, and if applicable, the victims or their legal representative when they participate in the proceedings pursuant to rules [*] to [*], have the right to question that witness about relevant matters related to the witness's testimony and its reliability and with the permission of the Chamber on other relevant matters. At any time, the Trial Chamber has the right to question a witness. In all cases the defence shall have the right to be the last to examine a witness.

(c) Unless otherwise ordered by the Trial Chamber, a witness other than an expert, or an investigator if he or she has not yet testified, shall not be present when the testimony

of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying. When a witness testifies after hearing the testimony of others, the Trial Chamber shall take notice of this fact.

Rule 6.19
Record of the proceedings

(a) The Registrar shall maintain the record of the proceedings transmitted by the Pre-Trial Chamber, pursuant to rule 5.18 (g).

(b) Subject to any restrictions concerning confidentiality and the protection of national security information, the record may be consulted by the Prosecutor, the defence, the representatives of States when they participate in the proceedings, and the victims or their legal representatives when they participate in the proceedings pursuant to rules (x) to (xx).[65]

Rule 6.20
Disclosure and additional evidence

In order to enable the parties to prepare for trial and to facilitate the fair and expeditious conduct of the proceedings, the Trial Chamber shall, in accordance with article 64, paragraphs 3 (c) and 6 (d), and article 67, paragraph (2), and subject to article 68, paragraph 5, make any necessary orders for the disclosure of documents or information not previously disclosed and for the production of additional evidence. To avoid delay and to ensure that the trial commences on the set date, any such orders shall include strict time limits which shall be kept under review by the Trial Chamber.

Rule 6.21
Additional hearings on matters related to sentence or reparations

Pursuant to article 76, paragraphs 2 and 3, for the purpose of holding *a* further *hearing* on matters related to sentence and, if applicable, reparations, the Presiding Judge[66] of the Trial Chamber shall set the date of the further hearing. This hearing can be postponed, in exceptional circumstances, by the Trial Chamber, on its own motion or at the request of the Prosecutor or the defence and, if applicable, at the request of the victims or their legal representatives when they participate in the proceedings pursuant to rules (x) to (xx).[67]

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[65] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[66] See PCNICC/1999/WGRPE/DP.9 in relation to proposals concerning the functions of the "Reporting Judge".

[67] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

Rule 6.22
Closure of evidence and closing statements

(a) The Presiding Judge[68] of the Trial Chamber shall declare when the submission of evidence is closed.

(b) The Presiding Judge[69] of the Trial Chamber shall invite the Prosecutor, the defence and, if applicable, the legal representative of the victims to make their closing statements. The Presiding Judge may also invite such participants to make statements in reply to the other closing statements. The defence shall always have the opportunity to speak last.

Rule 6.23
Postponement of the deliberations

(a) After the closing statements, the Trial Chamber shall retire to deliberate, in camera. The Trial Chamber shall inform the Prosecutor, the defence and, if applicable, the legal representatives of the victims and the representatives of States which have participated in the proceedings of the date on which the Trial Chamber will pronounce its decision. [The pronouncement will not be later than [x] days after the Trial Chamber has retired to deliberate.]

(b) When there is more than one charge, the Trial Chamber shall decide separately on each charge. When there is more than one accused, the Trial Chamber shall decide separately on the charges against each accused.

Rule 6.24
Delivery of the decisions of the Trial Chamber

(a) Decisions of the Trial Chamber concerning admissibility of a case, the jurisdiction of the Court, criminal responsibility of the accused, or sentence and reparations shall be pronounced in public and, wherever possible, in the presence of the accused, the Prosecutor and, if applicable, in the presence of the legal representatives of the victims and the representatives of the States which have participated in the proceedings.

(b) Copies of all the above-mentioned decisions shall be provided as soon as possible:

(i) To the person, in a language he or she understands and speaks fully;

(ii) To the person's counsel, the Prosecutor and, if applicable, to the legal representatives of the victims and the representatives of the States which have participated[70] in the proceedings, in the working languages of the Court.

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[68] See PCNICC/1999/WGRPE/DP.9 in relation to proposals concerning the functions of the "Reporting Judge".

[69] Ibid.

[70] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

Rule 6.25
Decision on the admission of guilt

(a) After having proceeded in accordance with article 65, paragraph 1, the Trial Chamber, in order to fulfil its functions under article 65, paragraph 4, may invite the views of the Prosecutor, the defence, and if applicable, the legal representative of the victims in accordance with rules (x) to (xx).

(b) The Trial Chamber shall then make its decision on the admission of guilt and shall give reasons for this decision, which shall be placed on the record.

Rule 6.26
Live testimony by means of audio or video link technology

(a) In accordance with article 69, paragraph 2, a Chamber may allow a witness to give viva voce (oral) testimony before the Chamber by means of video or audio technology, provided that the technology permits the witness to be examined by the Prosecutor, the defence, the victims or their legal representatives in accordance with rules X to XX, and by the Chamber itself, at the time that the witness so testifies.

(b) The examination of a witness under this rule shall be conducted in accordance with rules 6.1 to 6.29.

(c) The Chamber, with the assistance of the Registry, shall ensure that the venue chosen for the conduct of the video or audio link testimony is conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness. The venue chosen for the conduct of the video or audio link testimony may include an embassy, a consulate, an Office of the United Nations or a court facility.

Rule 6.27
Prior recorded testimony

(a) When the Pre-Trial Chamber has not taken measures under article 56, the Trial Chamber may, in accordance with article 69, paragraph 2, allow the introduction of previously recorded video or audio testimony of a witness, or the transcript or other documented evidence of such testimony, provided that:

(i) If the witness who gave the previously recorded testimony is not present before the Trial Chamber, both the Prosecutor and the defence had the opportunity to examine the witness during the recording; or

(ii) If the witness who gave the previously recorded testimony is present before the Trial Chamber, he or she does not object to the submission of the previously recorded testimony, and the Prosecutor, the defence, the victims or their legal representatives in accordance with rules X to XX, and the Chamber, have the opportunity to examine the witness during the proceedings.

Rule 6.28
Protective measures

(a) Upon the motion of the Prosecutor or the defence or upon the request of a witness or a victim or his or her legal representative participating in the proceedings pursuant to rules X to XX or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may order measures to protect a victim, a witness or another person at risk on account of testimony given by a witness or witnesses, pursuant to article 68, paragraphs 1 and 2. The Chamber shall obtain the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure.

(b) A motion or request under subparagraph (a) shall be governed by rule 6.12, provided that:

(i) Such a motion or request shall not be submitted *ex parte*;

(ii) A request by a witness or by a victim or his or her legal representative participating in the proceedings pursuant to rules X to XX shall be served on both the Prosecutor and the defence, each of whom shall have the opportunity to respond;

(iii) A motion or request affecting a particular witness or a particular victim shall be served on that witness or victim or his or her legal representative, in addition to the non-moving party, each of whom shall have the opportunity to respond;

(iv) When the Chamber proceeds on its own motion, notice and opportunity to respond shall be given to the Prosecutor and the defence, and to any particular witness or any particular victim or his or her legal representative, who would be affected by such protective measure; and

(v) A motion or request may be filed under seal, and if so filed shall remain sealed until otherwise ordered by a Chamber. Responses to motions or requests filed under seal shall also be filed under seal.

(c) A Chamber may hold a hearing on a motion or request under subparagraph (a), which hearing shall itself be conducted in camera, to determine whether to order measures to prevent the release to the public or press and information agencies, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness or witnesses, by ordering, *inter alia*:

(i) That the name of the victim, witness or other person at risk on account of testimony given by a witness or witnesses, or any information which could lead to his or her identification, be expunged from the Chamber's public records;

(ii) That the Prosecutor, the defence or any other person or party involved in the proceedings be prohibited from disclosing such information to a third party;

(iii) That testimony be presented by electronic or other special means, including the use of technical means enabling the alteration of pictures or voice, the use of audio-visual technology (in particular videoconferencing and closed-circuit television) and the exclusive use of the sound media;

(iv) That a pseudonym be used for a victim, a witness or other person at risk on account of testimony given by a witness or witnesses; or

(v) That a Chamber conduct part of its proceedings in camera.

Rule 6.29
Special measures

(a) Upon the motion of the Prosecutor or the defence, or upon the request of a witness or a victim or his or her legal representative participating in the proceedings pursuant to rules X to XX or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may, taking into account the views of the victim or witness, order special measures such as but not limited to measures to facilitate the testimony of a traumatized victim or witness, a child, an elderly person or a victim of sexual violence, pursuant to article 68, paragraphs 1 and 2. The Chamber shall obtain the consent of the person in respect of whom the special measure is sought prior to ordering the special measure.

(b) A Chamber may hold a hearing on a motion or a request under subparagraph (a), if necessary in camera or *ex parte*, to determine whether to order any such special measure, including but not limited to an order that a counsel, a legal representative, a psychologist or a family member be permitted to attend during the testimony of the victim or the witness.

(c) For *inter partes* motions or requests filed under this rule, the provisions of rule 6.28, subparagraph (b) (ii) to (iv), shall apply *mutatis mutandis*.

(d) A motion or request filed under this rule may be filed under seal, and if so filed shall remain sealed until otherwise ordered by a Chamber. Any responses to *inter partes* motions or requests filed under seal shall also be filed under seal.

(e) Taking into consideration that violations of the privacy of a witness or victim may create risk to his or her security, a Chamber shall be vigilant in controlling the manner of questioning a witness or victim so as to avoid any harassment or intimidation, paying particular attention to attacks on victims of crimes of sexual violence.

(f) Agreements on relocation and provision of support services on the territory of a State of traumatized or threatened victims, witnesses and others at risk on account of testimony given by a witness or witnesses may be negotiated with the States by the Registrar on behalf of the Court. Such agreements may remain confidential.[71]

Rule 6.30
Participation of victims in the proceedings

Rule [A]

1. In order to present their views and concerns,[72] victims, or persons acting with their consent, shall make written application to a Chamber of the Court. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the written application shall be communicated to the Prosecutor and the defence, who shall at all times be entitled to reply within a period of time to be set by the Chamber in question.

The Chamber shall specify the proceedings and manner in which participation is considered appropriate.

2. A Chamber of the Court, on its own initiative or on the application of the Prosecutor or the defence, may reject the application of the victims if it considers that the criteria set

[71] Subparagraph (f) of rule 6.29 may be better placed in Part 4 of the Rules of Procedure and Evidence.

[72] These rules will need to be reconsidered in the light of any definition of "victims".

forth in article 68, paragraph 3, are not fulfilled. A victim whose written application has been rejected by a Chamber of the Court may file a new application later in the proceedings.

Rule [B]

1. Subject to the provisions of rule [A], paragraph 1, a victim shall be free to choose a legal representative.

Where there are a number of victims the Chamber may, for the purposes of ensuring the effectiveness of the proceedings, request the victims or particular groups of victims, if necessary with the assistance of the Registry, to choose a common legal representative or representatives.

If the victims are unable to choose a common representative or representatives, the Chamber may ask the Registry to appoint one or more legal representatives.

2. A person shall be qualified to be a legal representative of a victim if he or she is admitted to the practice of law in a State or is a Professor of Law at a university.

3. In facilitating the coordination of victim representation in accordance with paragraph 1 of this rule, the Registry may provide assistance, *inter alia*, by referring the victims to a list of lawyers, maintained by the Registry, and also including financial assistance.

A victim or group of victims who lack the necessary means to pay for an appointed legal representative may apply to the Registry for assistance, *inter alia*, by making available a lawyer from the Registry, and also including financial assistance.

4. The Chamber and the Registry shall take all reasonable steps to ensure that in the selection of legal representatives, the distinct interests of the victims, particularly as provided in article 68, paragraph 1, are represented and that any conflict of interest is avoided.

Rule [C]

1. In accordance with the ruling given under rule A, a legal representative of a victim shall be entitled to attend and participate in the hearings unless the Chamber concerned rules, giving grounds, that the representative's intervention should be confined to the deposition of written observations.

When a hearing is in progress, the Prosecutor and the defence must be able to reply to the oral interventions of the victim's legal representative.

If the legal representative of a victim submits a written request, the Prosecutor and the defence shall be allowed to reply within a period of time to be set by the Chamber.

2. When a legal representative attends and participates in accordance with paragraph 1 of this rule, and wishes to question a witness, expert or the accused, the legal representative must make application to the Chamber. The Chamber may require the legal representative to provide a written note of the questions and in that case the questions shall be communicated to the Prosecutor,[73] who shall be allowed to make observations within a period of time set by the Chamber. The Chamber shall then issue a ruling on the request taking into account the stage of the proceedings, the rights of the accused, the interests of witnesses, the need for a fair, impartial and expeditious trial and in order to give effect to article 68, paragraph 3. The ruling may include directions on the manner and order of the questions and the production of documents in accordance with the powers of the Chamber

[73] Consideration needs to be given as to whether it is necessary to consult the defence in appropriate cases.

under article 64. The Chamber may if it considers it appropriate put the question to the witness, expert or accused on behalf of the victim's legal representative.

3. For a hearing limited to reparations under article 75, the restrictions on questioning by the legal representative set forth in paragraph 2 of this rule shall not apply. In that case, the legal representative may, with the permission of the Chamber concerned, question witnesses, experts and the person concerned.

Rule 6.31
Reparations to victims

Rule A. Procedure upon request

(a) A victim's request for reparations under article 75 shall be made in writing or in electronic form and filed with the Registrar. It shall contain at least the following particulars:

- Information regarding the identity and address of the claimant, subject to any protective measures ordered by the Court;
- A description of the injury, loss or harm caused by the person or persons named in the charges;
- Where restitution of assets, property or other tangible items is sought, a description of them;
- Claims for compensation;
- Claims for rehabilitation and other forms of remedy;
- Any relevant supporting documentation, including names and addresses of witnesses.

(b) Unless the person is not at the seat of the Court and cannot be located, the request shall be notified to the person or persons named in the request, and to any other interested persons and any interested States.

Those notified have the right to respond to the request.

Rule B. Procedure on the motion of the Court

(a) In cases where the Court decides to proceed on its own motion pursuant to article 75, paragraph 1, it shall ask the Registrar to notify its decision to the person or persons against whom the Court is considering making a determination, to victims to the extent possible, to any interested persons and to any interested States.

Those notified have the right to make observations.

(b) If, as a result of notification under paragraph (a), a victim makes a request for reparations, that request will be determined as if it had been brought under rule A.

Rule C. Publication of proceedings

(a) Without prejudice to any other rules on notification of proceedings, the Registrar shall, having regard to any information provided by the Prosecutor and insofar as practicable, take all the necessary measures to give adequate publicity of proceedings before the Court to victims to the extent possible, or their legal representatives, to interested persons and interested States.

(b) In taking the measures described in paragraph (a), the Court may seek in accordance with Part 9 the cooperation of relevant States Parties, and seek the assistance of organs of the United Nations, intergovernmental or non-governmental organizations in order to give publicity to the proceedings before the Court as widely as possible and by all possible means.

Rule D. Assessment of reparations

(a) The Court may award reparations on an individualized or collective basis, taking into account the scope and extent of any damage, loss and injury.

(b) At the request of victims or their legal representatives, or at the request of the convicted person, or on its own motion, the Court may appoint appropriate experts to assist it in determining the scope, extent of any damage, loss and injury to, or in respect of victims and to suggest various options concerning the appropriate types and modalities of reparations.

Rule E. Trust Fund

(a) In making an order for reparations to be awarded through the Trust Fund, the Court may take into account, *inter alia*, the number of the victims and the scope, forms and modalities of reparations.

(b) The Court may order that an award of reparations be made through the Trust Fund to an international or national organization approved by the Court to cooperate or assist the Fund.

(c) The Court may, at any time before it has made a determination relating to reparations, order the Trust Fund to provide interim relief to victims, such as medical or psychological attention or other humanitarian assistance.[74]

Rule F. Evidence and standard of proof for reparations

N.B. There is a need for further discussion on the necessity and, if so, on the contents of this rule.[75]

Rule G. Procedure under articles 57, paragraph 3 (e), and 75, paragraph 4

(a) The Pre-Trial Chamber, pursuant to article 57, paragraph 3 (e), or the Trial Chamber, pursuant to article 75, paragraph 4, may, on its own motion or at the request of the Prosecutor or at the request of the victims or their legal representatives who have made a request for reparations or who have given an undertaking to do so, hold proceedings in order to determine whether measures should be requested.

(b) The Registrar shall provide notification of the proceedings to the person against whom a request is made or any interested persons or any interested States, unless the relevant

[74] Further discussion is needed to clarify under which circumstances the Court should provide interim relief to victims. It could also be necessary to find a way to avoid conflicts between the Trust Fund and the Victims and Witnesses Unit. Consideration should also be given to the consequences of interim relief in cases where the Court ultimately makes no finding of guilt and consequently is unable to order reparations and whether receiving this kind of relief could create the appearance of bias on the part of a potential witness.

[75] In order to award reparations, there must be a conviction. Once there is a conviction the question arises as to what standard of proof the Court needs to use in order to make its findings on all aspects of the reparations, especially regarding causation, types and quantum of reparations.

Chamber determines that the notification could jeopardize the effectiveness of the measures requested.

If any such notification is made, the persons or States shall have the right to make observations.

(c) If an order is made without notification, the Court shall as soon as practicable hold an *inter partes* hearing to enable any persons against whom a request is made or any interested persons or any interested States to make observations to the effect that the order should be revoked or otherwise modified.

Rule 6.X
Place of the proceedings[76]

(a) The Court may, in a particular case, where it considers that it would be in the interests of justice, decide to sit in a State other than the host State.

(b) An application for changing the place where the Court sits may be filed at any time after the initiation of an investigation, either by the Prosecutor, the defence or by a majority of the judges of the Court. Such an application or recommendation shall be addressed to the Presidency. It shall be made in writing and specify in which State the Court would sit. The Presidency shall satisfy itself of the views of the relevant Chamber.

(c) The Presidency shall consult the State where the Court intends to sit. If that State so agrees, the decision to sit in a State other than the host State shall be taken by the judges, at a plenary meeting, by a two-thirds majority.

[(d) deleted][77]

III. Rules 6.32 to 6.39
Offences against the administration of justice under article 70

Rule 6.32
Exercise of jurisdiction[78]

(a) The Court shall have the primary power to exercise jurisdiction in cases envisioned under article 70 in the case of a positive jurisdictional conflict with the host State. The Court shall give sympathetic consideration to a request from the host State for a waiver of its primary power to exercise jurisdiction in cases where the host State considers such a waiver to be of particular importance.

(b) In other cases, in making a decision whether or not to exercise jurisdiction, the Court may consider, in particular:

(i) The availability and effectiveness of prosecution in a State Party;

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[76] This rule does not affect whether the judges can travel outside the seat of the Court for other purposes.

[77] Matters relating to the privileges, immunities and facilities set forth in article 48 should be dealt with in the agreement on the privileges and immunities of the Court, or in a special agreement with the State receiving the Court.

[78] This rule replaces the proposal in document PCNICC/1999/WGRPE/DP.31, which itself replaces the proposals contained in documents PCNICC/1999/WGRPE/DP.27 (in part) and PCNICC/1999/WGRPE/DP.29. It also replaces rule 6.34 in document PCNICC/1999/WGRPE/RT.5.

(ii) The seriousness of an offence;

(iii) The possible joinder of charges under article 70 with charges under articles 5 to 8;

(iv) The need to expedite proceedings;

(v) Links with an ongoing investigation or a trial before the Court; and

(vi) Evidentiary considerations.

(c) If the Court decides not to exercise its jurisdiction, it may request a State Party to exercise jurisdiction pursuant to article 70, paragraph 4.

(d) Before deciding whether to exercise jurisdiction, the Court may consult with States Parties that may have jurisdiction over the offence.

Rule 6.33
Application of the Statute and Rules[79]

(a) Unless otherwise provided in paragraphs (b) and (c) of this rule, rule 6.32 and rules 6.34 to 6.39, the Statute and Rules of Procedure and Evidence shall apply *mutatis mutandis* to the Court's investigation, prosecution and punishment of offences defined in article 70.[80]

(b) The provisions of Part 2, and any rules thereunder, shall not apply, with the exception of article 21.

(c) The provisions of Part 10, and any rules thereunder, shall not apply, with the exception of articles 103, 107, 109 and 111.

Rule 6.34
Statute of limitation[81] [82]

(a) Offences defined in article 70 shall be subject to a period of limitation of (x) years from the date on which the offence was committed, provided that during this period no investigation or prosecution has been initiated.

The statute of limitation shall be interrupted, if an investigation or prosecution has been initiated during this period, either before the Court or by a State Party with jurisdiction over the case pursuant to article 70, paragraph 4 (a).

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[79] This rule replaces rules 6.27 and 6.28 in document PCNICC/1999/WGRPE/RT.5 and the proposed amendment to rule 6.32 in document PCNICC/1999/WGRPE/DP.27.

[80] This rule, as well as other rules relating to article 70, will need to be revised after all the rules in the Rules of Procedure and Evidence have been completed.

[81] This rule replaces the proposal in document PCNICC/1999/WGRPE/DP.25.

[82] The statute of limitations is intended to apply only when the Court chooses to exercise jurisdiction in accordance with rule 6.32. Further, it is not meant to affect the right to seek revision in accordance with article 84. Consideration should be given whether these issues need to be reflected in the rule. The question was also raised as to how the initiation of an investigation before the Court should be established.

(b) Enforcement of sanctions imposed with respect to offences defined in article 70 shall be subject to a period of limitation of (x) years from the date on which the sanction has become final.

The statute of limitation shall be interrupted with the detention of the convicted person or while the person concerned is staying outside the territory of the States Parties.

Rule 6.35
Investigation, prosecution and trial[83]

(a) The Prosecutor may initiate and conduct investigations with respect to the offences defined in article 70, on his or her own initiative, on the basis of information communicated by a Chamber of the Court or any reliable source.[84]

(b) Articles 53 and 59, and any rules thereunder, shall not apply.[85]

(c) For purposes of article 61, the Pre-Trial Chamber may make any of the determinations set forth in that article on the basis of written submissions, without a hearing, unless the interest of justice otherwise requires.

(d) With the consent of all parties, a Trial Chamber may, as appropriate, direct that there be joinder of charges under article 70 with charges under articles 5 to 8.

Rule 6.36
Penalties[86]

(a) The fine imposed under article 70, paragraph 3, may not exceed (x) euros, or the equivalent amount in any other currency.

(b) Each offence may be separately fined, and those fines may be cumulative.

(c) Article 77, and any rules thereunder, shall not apply, with the exception of an order of forfeiture under article 77, paragraph 2 (b), which may be ordered in addition to imprisonment or a fine imposed for an offence as defined in article 70, paragraph 1 (f).[87]

Rule 6.37
International cooperation and judicial assistance[88]

(a) With regard to offences under article 70, the Court may request a State to provide any form of international cooperation or judicial assistance corresponding to those forms set forth in Part 9. In any such request, the Court shall indicate that the basis for the request is an investigation or prosecution of offences under article 70.

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[83] This rule is a reproduction of rule 6.30 in document PCNICC/1999/WGRPE/RT.5.

[84] Consideration should be given to whether further preconditions or procedural steps are called for.

[85] Consideration should be given as to whether article 54, paragraph 2 (b), should also be excluded.

[86] This rule replaces rule 6.32 in document PCNICC/1999/WGRPE/RT.5.

[87] Consideration should be given as to whether this provision should apply also to bribery of a person not being an official of the Court.

[88] This rule replaces rule 6.33 in document PCNICC/1999/WGRPE/RT.5.

(b) The conditions for providing international cooperation or judicial assistance to the Court with respect to offences under article 70 shall be those set forth in article 70, paragraph 2.

Rule 6.38
Ne bis in idem[89]

In respect of offences under article 70, no person shall be tried before the Court with respect to conduct which formed the basis of an offence for which the person has already been convicted or acquitted by the Court or another court.

Rule 6.39
Immediate arrest[90]

In the case of an alleged offence under article 70 committed in the presence of a Chamber of the Court, the Prosecutor may orally request that Chamber to order the immediate arrest of the person concerned.

IV. Rules 6.40 to 6.42[91]
Misconduct before the Court under article 71

Rule 6.40
Disruption of proceedings

Having regard to article 63, paragraph 2, the presiding judge of the Chamber of the Court dealing with the matter may, after giving a warning, order a person disrupting the Court's proceedings to leave or be removed from the courtroom, or, in case of repeated misconduct, permanent or temporary interdiction from attending the proceedings.

Rule 6.41
Refusal to comply with a direction by the Court

(a) When the misconduct consists of deliberate refusal to comply with an oral or written direction by the Court, not covered by rule 6.40, and that direction is accompanied by a warning of sanctions in case of breach, the presiding judge of the Chamber of the Court dealing with the matter may order the permanent or temporary interdiction from the proceedings or, if the misconduct is of a more serious nature, impose a fine.

(b) If the person committing misconduct as described in paragraph (a) is an official of the Court, or a defence counsel, or a legal representative of victims, the presiding judge of the Chamber of the Court dealing with the matter may also order permanent or temporary

[89] This rule replaces rule 6.35 in document PCNICC/1999/WGRPE/RT.5.

[90] This rule replaces rule 6.36 in document PCNICC/1999/WGRPE/RT.5.

[91] Rules 6.40 and 6.41 replace rules 6.38 and 6.39 in document PCNICC/1999/WGRPE/RT.5. and rule 6.42 is a reproduction of rule 6.40 in the same document.

interdiction from the exercise of the person's function before the Court or any other administrative sanction as provided for in rules (x) to (xx).[92]

(c) A fine imposed under paragraph (a) or (b) of this rule shall not exceed (x) euros, or the equivalent amount in any currency, provided that in cases of continuing misconduct, a new fine may be imposed on each day that the misconduct continues, and such fines shall be cumulative.

(d) The person concerned shall be given an opportunity to be heard before a sanction for misconduct as described in this rule is imposed.

Rule 6.42
Concurrence

If a conduct covered by article 71 also constitutes one of the offences defined in article 70, the Court shall proceed in accordance with article 70 and rules 6.32 to 6.39.

Part 8 of the Rome Statute
The Appeal

Section 1. General provisions

Rule 8.1
Rules governing proceedings in the Appeals Chamber

Rules Y to YY governing proceedings and the submission of evidence in the Pre-Trial and Trial Chambers shall apply *mutatis mutandis* to proceedings in the Appeals Chamber.

Section 2. Ordinary appeal proceedings

Rule 8.2
Notice of appeal

(a) Subject to sub-rule (b), an appeal against a decision given under article 74, a sentence given under article 76 or an order given under article 75 may be filed not more than 15 days from the date on which the party filing the appeal is notified of the decision, the sentence or the order.

(b) The Appeals Chamber may extend the period set out in sub-rule (a), for good cause, upon the application of the party seeking to file the appeal.

(c) The notice of appeal shall be filed with the Registrar.

(d) If a notice of appeal is not filed as set out in sub-rules (a) to (c), the decision, the sentence or the order of the Trial Chamber shall become final.

[92] Reference is to rules on administrative sanctions underpinning Part 4 of the Statute.

Rule 8.3
Procedure for the appeal

(a) Upon the filing of a notice of appeal under rule 8.2, the Registrar shall transmit the trial record to the Appeals Chamber.

(b) The Registrar shall notify all parties who participated in the proceedings before the Trial Chamber that a notice of appeal has been filed.

(c) Proceedings before the Appeals Chamber shall take place in accordance with the relevant provisions of Parts 6 and 8 of the Statute and rules Y to YY.[93]

Rule 8.4
Discontinuance of the appeal

(a) Any party who has filed a notice of appeal may at any time file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other parties that such a notice has been filed.

(b) If the Prosecutor has filed a notice of appeal on behalf of a convicted person in accordance with article 81, paragraph 1 (b), before filing any notice of discontinuance the Prosecutor shall obtain the written consent of the convicted person to the filing of any notice of discontinuance.

(c) A notice of discontinuance shall take effect on the date it is filed.

Rule 8.5
Judgement on appeals against orders under article 75

(a) The Appeals Chamber may confirm, reverse or amend an order appealed against under article 82, paragraph 4, or may order a new hearing under article 75.

(b) The judgement of the Appeals Chamber shall be delivered in accordance with article 83, paragraph 4.

Section 3. Simplified appeals proceedings

Rule 8.6
Notice of appeal against decisions under article 81 (3) (c) (ii) and article 82 (1) (a), (b) or (c)

(a) An appeal may be filed under article 81, paragraph 3 (c) (ii), or under article 82, paragraph 1 (a), (b) or (c), not more than (X) days from the date upon which the party filing the appeal is notified of the decision.[94]

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[93] Rules Y to YY will be the rules governing the conduct of the trial for decisions on culpability, sentencing and reparations.

[94] It is suggested that the period in which to file the notice of appeal may be shorter than in the case of ordinary appeals proceedings. A five-day period could serve as the basis for discussion.

(b) Rule 8.2, subparagraphs (c) and (d), shall apply to an appeal filed under subparagraph (a).

Rule 8.7
Leave to appeal under article 82 (1) (d) and article 82 (2)

(a) When a party wishes to appeal a decision under article 82, paragraph 1 (d), or article 82, paragraph 2, that party shall, within (X) days of being notified of that decision, make a written application to the Chamber which gave the decision, setting out the reasons for the request for leave to appeal.[95]

(b) The Chamber shall render a decision and shall notify all parties who participated in the proceedings that gave rise to the decision referred to in subparagraph (a).

Rule 8.8
Procedure for appeals under article 81 (3) (c) (ii) and article 82 (1) and (2)

(a) As soon as a notice of appeal has been filed under rule 8.6 or as soon as leave to appeal has been granted under rule 8.7, the Registrar shall transmit to the Appeals Chamber the record of the proceedings of the Chamber that made the decision that is the subject of the appeal.

(b) The Registrar shall give notice of the appeal to all parties who participated in the proceedings before the Chamber that gave the decision that is the subject of the appeal.

(c) Within (X) days of the notice of appeal being filed in accordance with rule 8.6 or leave to appeal being granted in accordance with rule 8.7, a hearing shall be convened before the Appeals Chamber to fix the procedural arrangements for the hearing of the appeal.

(d) The parties involved in an appeal under article 81, paragraph 3 (c) (ii), or article 82, paragraphs 1 or 2, may submit observations during the hearing, and may in addition submit observations in writing unless the Appeals Chamber orders otherwise.

(e) An appeal under article 81, paragraph 3 (c) (ii), or article 82, paragraphs 1 or 2, shall be heard as expeditiously as possible.

(f) At the commencement of the hearing, the party bringing the appeal may request that the appeal have suspensive effect in accordance with article 82, paragraph 3.

Rule 8.9
Discontinuance of the appeal

Any party who has filed a notice of appeal under rule 8.6 or who has obtained the leave of a Chamber to appeal a decision under rule 8.7 may file with the Registrar a written notice of discontinuance of the appeal. The provisions of rule 8.4, subparagraphs (a) and (c), shall apply *mutatis mutandis* to a notice filed under this rule.

[95] Once again, it will be necessary to decide on the period in which this application must be made.

Rule 8.10
Judgement on appeals under article 81 (3) (c) (ii), article 82 (1) or article 82 (2)

(a) The Appeals Chamber may confirm, reverse or amend a decision appealed against under article 81, paragraph 3 (c) (ii), article 82, paragraph 1, or article 82, paragraph 2.

(b) The judgement of the Appeals Chamber shall be delivered in accordance with article 83, paragraph 4.

Annex III

Rules of Procedure and Evidence related to Part 4 of the Rome Statute

Annex III was prepared by the Secretariat on the basis of the oral report of the Coordinator for the Working Group on Rules of Procedure and Evidence related to Part 4 presented to the Preparatory Commission at its 8th meeting, on 13 August 1999.

1. The Working Group on Rules of Procedure and Evidence related to Part 4 held four meetings, from 5 to 10 August 1999. The Group had before it the proposals contained in documents PCNICC/1999/DP.1 and PCNICC/1999/DP.3, which were presented at the first session of the Preparatory Commission and which are listed in the summary of the proceedings of that session (see PCNICC/1999/L.3/Rev.1). The proposals submitted at the second session are contained in documents PCNICC/1999/WGRPE/DP.8 to DP.12, PCNICC/1999/WGRPE/DP.14, PCNICC/1999/WGRPE/DP.16, as well as PCNICC/1999/WGRPE(4)/DP.1, PCNICC/1999/WGRPE/DP.2 and Rev.1, PCNICC/1999/WGRPE/DP.3 and Rev.1, and PCNICC/1999/WGRPE/DP.4.

2. The Working Group considered proposals related to Part 4 of the Statute on the organization and composition of the Court. Informal consultations were held on the following three clusters: (a) rules relating to situations that may affect the functioning of the Court; (b) rules relating to some aspects of the organization of the Court, such as plenary sessions; election, qualification and precedence; organization of the Office of the Registrar and of the Office of the Prosecutor; and rules relating to defence council and witnesses; (c) rules relating to other aspects of the organization of the Court, such as replacements and organization of divisions and Chambers, as well as rules relating to texts and languages, amendments and solemn undertakings.

3. Taking account of the views expressed in the Working Group and in informal consultations, the Coordinator proposed document PCNICC/1999/WGRPE(4)/RT.1 as a discussion paper on rules relating to situations that may affect the functioning of the Court (see appendix).

4. While the Working Group had a general discussion on the rules pertaining to the three above-mentioned clusters, there was not enough time for the preparation of discussion papers on the latter two clusters. It is expected that consultations on those clusters will continue at the next session of the Commission.

Appendix

Discussion paper proposed by the Coordinator[1]

Part 4 of the Rome Statute
Organization and Composition of the Court

4.1 Rules relating to situations that may affect the functioning of the Court

Removal from office and disciplinary measures

4.1.1 Definition of serious misconduct and serious breach of duty

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall be removed from office in such cases and with such guarantees as are established in the Statute and in the Rules of Procedure and Evidence.[2]

1. Serious misconduct

For the purposes of article 46 (1) (a), "serious misconduct" shall be constituted by conduct which:

(a) If it occurs in the course of official duties, involves the exercise of an activity which is incompatible with official functions and which causes or could cause serious harm to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:

(i) Disclosing facts or information which a person has acquired in the course of his or her duties, where such disclosure is seriously prejudicial to the judicial proceedings or to any person, or disclosing facts or information on a matter which is *sub judice*;

(ii) Concealing information and circumstances, which would have precluded him or her from holding office;

(iii) Abuse of judicial office in order to obtain unwarranted favourable treatment from any authorities, officials or professionals; or

(b) If it occurs outside the course of official duties, constitutes egregious conduct, whether of a criminal or other nature, that causes or could cause serious harm to the standing of the Court.

[1] This paper is subject to further discussion and is without prejudice to the positions of delegations; only parts 4.1.1, 4.1.2, 4.1.3 and 4.1.4 of the paper have been discussed in informal consultations.

[2] The necessity or otherwise of this paragraph will be reconsidered after the remainder of the text has been elaborated.

2. **Serious breach of duty**

For the purposes of article 46, paragraph 1 (a), a "serious breach of duty" shall be taken to have occurred where a person has been grossly negligent in the performance of his or her duties or has knowingly acted in contravention of those duties, such as:[3]

(a) Failing to comply with the duty to request to be excused, knowing that there are grounds for doing so;

(b) Repeated and unwarranted delay in initiating, prosecuting or trying cases, or in the exercise of any judicial powers.

4.1.2 Definition of misconduct of a less serious nature

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall be subject to disciplinary measures in such cases and with such guarantees as are established in the Statute and in the Rules of Procedure and Evidence.[4]

For the purposes of article 47, "misconduct of a less serious nature" shall be constituted by:

(a) Conduct which, if it occurs in the course of official duties, causes or could cause harm to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:

(i) Interfering in the exercise of functions by a person referred to in this rule;

(ii) Repeatedly failing to comply with or ignoring the requests made by the Presiding Judge of the Chamber or by the Presidency of the Court in the exercise of their lawful authority;

(iii) Failing to enforce the disciplinary measures to which Registrars and other officers of the Court are subject when a judge knows or should know of a serious breach of duty on their part; or

(b) Any lesser conduct occurring outside the course of official duties that causes or could cause harm to the standing of the Court.

4.1.3 Receipt of complaints

For the purposes of article 46 (1) and article 47, any complaint concerning any conduct characterized under these Rules as serious misconduct, serious breach of duty or misconduct of a less serious nature shall include the grounds on which it is based, the identity of the complainant and any relevant evidence, if available. The complaint shall remain confidential.

All complaints shall be transmitted to the Presidency, which may also initiate proceedings on its own motion, and which shall, pursuant to the Regulations of the Court, set aside anonymous or manifestly unfounded complaints and transmit the other complaints to the competent organ. The Presidency shall be assisted in this task by one or more judges,

[3] Several delegations expressed the view that the examples indicated in the text need to be re-examined.

[4] The necessity or otherwise of this paragraph will be reconsidered after the remainder of the text has been elaborated.

appointed on the basis of automatic rotation, in accordance with the Regulations of the Court.[5] [6]

4.1.4 Procedure

1. Common provisions on rights of the defence[7]

In any case in which removal from office under article 46 or the taking of disciplinary measures under article 47 is under consideration, the person concerned shall be so informed in a written statement.

The person concerned shall be afforded full opportunity to present and receive evidence and to make written submissions:

(a) In the case of the Deputy Prosecutor, to the Prosecutor; or

(b) In all other cases, in a plenary session of the Court specially convened for the purpose.

The person concerned shall also have full opportunity to supply answers to any questions put to him or her. He or she may be represented by a lawyer during the process established under this rule.

2. Procedure in the event of a request for removal from office

(a) Judges

(i) The question of whether a recommendation should be made to the Assembly of States Parties that a judge be removed from office shall be put to the vote at a further plenary session of the Court to be held no later than one month after the session held pursuant to rule X [*the rule dealing with opportunity to present and receive evidence, make submissions, etc.*]. If no scheduled plenary session will be held within that time, a plenary session shall be specially convened to allow the vote to be taken ...

(ii) If the recommendation is adopted, it shall be transmitted to the President of the Bureau.

(iii)

Option one

It shall be open to the judges in an appropriate case, if they decide not to make a recommendation to the Assembly on removal from office, to decide in accordance

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[5] Some delegations expressed the view that this text should include language to the effect that the Prosecutor would be responsible for dealing with any complaint against a Deputy Prosecutor, and that the Presidency should not be responsible for dealing with a complaint against the Prosecutor. Some delegations also suggested that a distinction would need to be made between complaints of serious misconduct/serious breach of duty (article 46) and misconduct of a less serious nature (article 47).

[6] Some delegations expressed a preference for inclusion of the following language:

"Any complaint concerning the functioning of the Court in general and the conduct of the judges in particular shall, within one month, be the subject of a report by the judge whose turn it is to report, who may, after making inquiries, propose to the Presidency of the Court that the complaint be filed outright or that disciplinary proceedings be initiated. If disciplinary proceedings are initiated, the complainant shall be notified of any resulting decisions and may make submissions."

[7] Some delegations suggested that a distinction would need to be made between complaints of serious misconduct/serious breach of duty (article 46) and misconduct of a less serious nature (article 47).

with article 47 that the judge concerned has engaged in misconduct of a less serious nature and to impose a disciplinary measure.

Option two

If the judges decide not to make a recommendation to the Assembly on removal from office, they may, in an appropriate case, refer the case to the disciplinary chamber.

(b) Registrar or Deputy Registrar

(i) The question of whether the Registrar or the Deputy Registrar should be removed from office shall be put to the vote at a further plenary session of the Court to be held no later than one month after the session held pursuant to rule X [*the rule dealing with opportunity to present and receive evidence, make submissions, etc.*]. If no scheduled plenary session will be held within that time, a plenary session shall be specially convened to allow the vote to be taken.

(ii) The President shall inform the President of the Bureau in writing of the result of this vote.

(iii)

Option one

It shall be open to the judges in an appropriate case to decide in accordance with article 47 that the Registrar or the Deputy Registrar concerned has engaged in misconduct of a less serious nature and to impose a disciplinary measure.

Option two

If the judges decide in accordance with article 47 that the Registrar or the Deputy Registrar concerned has engaged in misconduct of a less serious nature, they may, in an appropriate case, refer the case to the disciplinary chamber.

(c) Deputy Prosecutor

(i) The Prosecutor shall ensure that rule X [*which deals with full opportunity to present and receive evidence, make submissions, etc.*] is complied with before deciding on whether he or she should recommend to the Assembly of States Parties that a Deputy Prosecutor be removed from office.

(ii) The Prosecutor shall inform the President of the Bureau of his or her decision under sub-rule (X).]

(iii)

Option one

It shall be open to the Prosecutor in an appropriate case to decide in accordance with article 47 that the Deputy Prosecutor concerned has engaged in misconduct of a less serious nature and to impose a disciplinary measure.

Option two

If the Prosecutor decides in accordance with article 47 that the Deputy Prosecutor concerned has engaged in misconduct of a less serious nature, he or she may, in an appropriate case, refer the case to the disciplinary chamber.

N.B.: This rule only applies to a Deputy Prosecutor. As the removal from office of the prosecutor is a matter to be addressed solely by the Assembly of States Parties, the Assembly should establish a procedural regime to govern the matter.

(d) Prosecutor

Some delegations consider that there should be a separate rule giving guidelines to the Assembly of States Parties in relation to removal from office of the Prosecutor.

Penalties

1. Removal from office

Once pronounced, removal from office shall take effect immediately. The person concerned shall cease to form part of the Court, including for unfinished cases in which he or she was taking part. That person may not at any time in the future be elected or appointed to again form part of the Court.

2. Disciplinary measures

The disciplinary measures which may be imposed are:

(i) A reprimand; or

(ii) [A suspension from duty for a period of no more than [(X)] [6] months involving suspension of salary for the same period]; or

(iii) A fine, which may not exceed [six months] of the salary paid by the Court to the person concerned. [The disciplinary chamber may decide to allow the fine to be paid in instalments.]

[3. Time limits

The penalties imposed for serious misconduct shall expire after two years, and for those imposed for less serious misconduct after one year. The time limits shall be reckoned as from the day following the day on which the judgement imposing the penalties becomes enforceable.] Parties.

Annex IV

Elements of Crimes

Annex IV was prepared by the Secretariat on the basis of the oral report of the Coordinator for the Working Group on the Elements of Crimes presented to the Preparatory Commission at its 8th meeting, on 13 August 1999.

1. The Working Group on Elements of Crimes held 10 meetings, from 26 July to 12 August 1999. It had before it several proposals in addition to those which had been proposed at the first session of the Preparatory Commission and which are listed in the summary of the proceedings of that session (see PCNICC/1999/L.3/Rev.1). The proposals submitted at the second session are contained in documents PCNICC/1999/WGEC/DP.8 to DP.27; and PCNICC/1999/WGEC/INF.2 and Add.1–2.

2. The Working Group resumed consideration of the elements of war crimes, article 8 of the Statute, that it had already begun at the first session, but had been unable to complete. To facilitate discussion, the remaining provisions of the war crimes were divided into nine clusters, based upon the possible commonality of their elements.

3. Taking account of the views expressed in the Working Group and in informal consultations and the proposals by Governments, the Coordinator proposed the following discussion papers for consideration at the next session of the Preparatory Commission (see appendix):

- PCNICC/1999/WGEC/RT.4 on elements of article 8 (2) (a);
- PCNICC/1999/WGEC/RT.5/Rev.1 on elements of article 8 (2) (c);
- PCNICC/1999/WGEC/RT.6 on elements of article 8 (2) (b) (xxii);
- PCNICC/1999/WGEC/RT.7 on elements of article 8 (2) (b) (xiii) to (xvi) and (xxvi);
- PCNICC/1999/WGEC/RT.8 on elements of article 8 (2) (b) (x) and (xxi);
- PCNICC/1999/WGEC/RT.9 on elements of article 8 (2) (b) (i) to (iii);
- PCNICC/1999/WGEC/RT.10 on elements of article 8 (2) (b) (vi), (vii), (xi) and (xii).

4. There is also document PCNICC/1999/WGEC/INF.3 and Corr.1 containing a compilation of proposals by Governments on elements of article 8 (2) (b) (viii) (see appendix).

5. While the Working Group had a general discussion on the elements of all the crimes contained in article 8, there was not sufficient time for the Coordinator to prepare discussion papers on the elements of all the provisions of war crimes.

6. Substantial progress was made on article 8 during the current session of the Working Group. Further consideration of the article is required at the next session of the Working Group to ensure the formulation of generally acceptable elements of crimes in article 8, as part of a complete set of elements of crimes for all crimes laid down in the Statute.

Appendix

Discussion papers proposed by the Coordinator

Article 8 (2) (a)

[N.B. The present paper is without prejudice to its final format, in particular with regard to the inclusion of a general paragraph and footnotes.]

The following general paragraph would be included as an introduction to the Elements of article 8.

> "Consistent with the general principles of law defined in article 30, it is presumed that all conduct described in the elements must be intentionally committed and the elements do not repeat the general intent implied in each action. Likewise, the elements presume that the conduct is not otherwise legally justified under applicable law referred to in article 21, paragraph 1 (b) and (c) of the Statute. Hence, the element of "unlawfulness" that exists in the Statute and in the jurisprudence of many of these offences has not been repeated in the elements of crimes. Absence of a lawful justification for a particular action need not be proved by the Prosecutor unless the issue is raised by the accused".[1]

Article 8 (2) (a) (iv): War crime of destruction and appropriation of property

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused destroyed or appropriated certain property.
3. Such property was protected against destruction or appropriation under one or more of the relevant Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.
4. The destruction or appropriation was not justified by military necessity.
5. The destruction or appropriation was extensive and carried out wantonly.

Article 8 (2) (a) (v): War crime of compelling service in hostile forces

Elements

1. The conduct took place in the contest of and was associated with an international armed conflict.
2. The accused coerced one or more persons, by act or threat, to take part in military operations against that person's own country or forces or otherwise serve in the forces of a hostile power.

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[1] This sentence may require further reflection since it also relates to the work of the Working Group on the Rules of Procedure and Evidence.
This general paragraph replaces the general paragraph under War crimes in document PCNICC/1999/L.3/Rev.1, p. 21.

3. Such person or persons were protected under one or more of the relevant Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

Article 8 (2) (a) (vi): War crime of denying a fair trial

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused deprived one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the third and the fourth Geneva Conventions of 1949.
3. Such person or persons were protected under one or more of the relevant Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

Article 8 (2) (a) (vii) – 1: War crime of unlawful deportation and transfer

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused deported or transferred one or more persons to another State or to another location.
3. Such person or persons were protected under one or more of the relevant Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

Article 8 (2) (a) (vii) – 2: War crime of unlawful confinement

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused confined or continued to confine one or more persons to a certain location.
3. Such person or persons were protected under one or more of the relevant Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

Article 8 (2) (a) (viii) – 2: War crime of taking hostages

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused seized, detained or otherwise held hostage one or more persons.

3. The accused threatened to kill, injure or continue to detain such person or persons.

4. Such person or persons were protected under one or more of the relevant Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

5. The accused intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.

* * *

Article 8 (2) (c)[2]

Article 8 (2) (c) (i) – 1: War crime of murder

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.[3]

2. The accused killed one or more persons.[4]

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel[5] taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.[6]

Article 8 (2) (c) (i) – 2: War crime of mutilation

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused mutilated one or more persons, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.

3. The conduct was not justified by the medical, dental or hospital treatment of the person or persons concerned and not carried out in such person's or persons' interests.

4. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.

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[2] It is understood that any modification to the draft elements for article 8 (2) (a), may require re-examination of the elements of article 8 (2) (c).

[3] This element would not be necessary if it were included in a general paragraph or in general elements to article 8 (2) (c).

[4] The term "killed" is interchangeable with the term "caused death".

[5] The term "religious personnel" includes those non-confessional non-combatant military personnel carrying out a similar function.

[6] This element would not be necessary if it were included in a general paragraph or in general elements to article 8 (2) (c).

Article 8 (2) (c) (i) – 3: War crime of cruel treatment

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused inflicted severe physical or mental pain or suffering upon one or more persons.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.

Article 8 (2) (c) (i) – 4: War crime of torture

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused inflicted severe physical or mental pain or suffering upon one or more persons.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.
4. The accused inflicted the pain or suffering for the purpose of obtaining information or a confession, punishment, intimidation or coercion, or obtaining any other similar purpose.

Article 8 (2) (c) (ii): War crime of outrages upon personal dignity

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused humiliated, degraded or otherwise violated the dignity of one or more persons.[7]
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.
4. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.

Article 8 (2) (c) (iii): War crime of taking hostages

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

[7] For this crime, "persons" can include dead persons.
It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation.
This element takes into account cultural background of the victim.

2. The accused seized, detained or otherwise held hostage one or more persons.

3. The accused threatened to kill, injure or continue to detain such person or persons.

4. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.

5. The accused intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.

Article 8 (2) (c) (iv): War crime of sentencing or execution without due process

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused passed sentence or executed one or more persons.[8]

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.

4. There was no previous judgement pronounced by a court, or the court that rendered judgement was not "regularly constituted", that is it did not afford the essential guarantees of independence and impartiality, or the court that rendered judgement did not afford all other judicial guarantees generally recognized as indispensable under international law.[9]

5. The accused was aware of the absence of a previous judgement or of the denial of relevant guarantees and the fact that they are essential or indispensable to a fair trial.[10]

* * *

Article 8, paragraph 2 (b) (xxii)

Article 8 (2) (b) (xxii) – 1: War crime of rape

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused invaded[11] the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

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[8] The elements laid down in these documents do not address the different forms of individual criminal responsibility, as enunciated in articles 25 and 28 of the Statute.

[9] With respect to elements 4 and 5, the Court should consider whether, in the light of all relevant circumstances, the cumulative effect of factors with respect to guarantees deprived the person or persons of a fair trial.

[10] Ibid.

[11] The concept of "invasion" is intended to be broad enough to be gender-neutral.

3. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.[12]

Article 8 (2) (b) (xxii) – 2: War crime of sexual slavery

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused exercised a power attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.
3. The accused caused such person or persons to engage in one or more acts of a sexual nature.

Article 8 (2) (b) (xxii) – 3: War crime of enforced prostitution

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.[13]
3. The accused or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

Article 8 (2) (b) (xxii) – 4: War crime of forced pregnancy

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused confined one or more women.
3. Such woman or women had been forcibly made pregnant.
4. The accused intended to keep the woman or women pregnant in order to affect the ethnic composition of a population or to carry out another grave violation of international law.

[12] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

[13] Ibid.

Article 8 (2) (b) (xxii) – 5: War crime of enforced sterilization

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused deprived one or more persons of biological reproductive capacity.[14]
3. The conduct neither was justified by the medical or hospital treatment of the person or persons concerned nor was carried out with their genuine consent.[15]

Article 8 (2) (b) (xxii) – 6: War crime of sexual violence

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.[16]
3. The conduct was of a gravity comparable to that of a grave breach of the Geneva Conventions.

* * *

Article 8 (2) (b) (xiii) – (xvi) and (xxvi)

Article 8 (2) (b) (xiii): War crime of destroying or seizing the enemy's property[17]

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused destroyed or seized certain property.
3. Such property was private or public property of the hostile party and the accused was aware of the status of the property.
4. The destruction or seizure was not required by military necessity.

[14] The deprivation is not intended to include birth-control measures.

[15] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

[16] Ibid.

[17] It is understood that the *chapeau* may have to be adapted to address the applicability of this crime in naval warfare.
It was understood that the Working Group will return to this crime to consider both its scope and its content.

Article 8 (2) (b) (xiv): War crime of depriving the nationals of the hostile power of rights or actions

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused effected the abolition, suspension or termination of admissibility in a court of law of certain rights or actions.
3. The abolition, suspension or termination was knowingly[18] directed at the nationals of a hostile party.

Article 8 (2) (b) (xv): War crime of compelling participation in military operations

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused coerced one or more persons by act or threat to take part in military operations against that person's own country or forces.
3. Such person or persons were nationals of a hostile party and the accused was aware of their nationality.

Article 8 (2) (b) (xvi): War crime of pillaging

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused appropriated or seized certain property.
3. The appropriation or seizure was not justified by military necessity and was committed with intent to deprive the owner thereof.

Article 8 (2) (b) (xxvi): War crime of using, conscripting or enlisting children

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused conscripted or enlisted one or more persons into the national armed forces or used one or more persons to participate actively in hostilities.
3. Such person or person were under the age of 15 years.
4. The accused knew or should have known that such person or persons were under the age of 15 years.

* * *

[18] Some delegations are of the view that "knowingly" in this element means "intentionally".

Article 8 (2) (b) (x) and (xxi)[19]

Article 8 (2) (b) (x) – 1: War crime of mutilation

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused mutilated one or more persons, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.
3. Such person or persons were in the power of an adverse party.
4. The conduct caused death or seriously endangered the physical or mental health of such person or persons.
5. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interest.[20]

Article 8 (2) (b) (x) – 2: War crime of medical or scientific experiments

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused subjected one or more persons to a medical or scientific experiment.
3. Such person or persons were in the power of an adverse party.
4. The experiment caused death or seriously endangered the physical or mental health or integrity of such person or persons.
5. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.[21]

Article 8 (2) (b) (xxi): War crime of outrages upon personal dignity

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused humiliated, degraded or otherwise violated the dignity of one or more persons.[22]

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[19] It is understood that any modifications to the draft elements for article 8 (2)(a), including the draft general paragraph to be included as an introduction to article 8, would require re-examination of this text for applicability.

[20] Consent is not a defence to this crime. The crime prohibits any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the party conducting the procedure and who are in no way deprived of liberty.

[21] Ibid.

[22] For this crime, "persons" can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account the cultural background of the victim.

3. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.

* * *

Article 8 (2) (b) (i) – (iii)

Article 8 (2) (b) (i): War crime of attacking civilians

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused attacked a civilian population as such or individual civilians not taking direct part in hostilities.
3. The accused intended the object of the attack to be the civilian population as such or individual civilians not taking direct part in hostilities.

Article 8 (2) (b) (ii): War crime of attacking civilian objects

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused attacked civilian objects, that is, objects which are not military objectives.
3. The accused intended the object of the attack to be one or more such civilian objects.

Article 8 (2) (b) (iii): War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused attacked personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.
3. Such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict and the accused was aware of the factual circumstances that established that protection.
4. The accused intended the object of the attack to be such personnel, installations, material, units or vehicles.

* * *

Article 8 (2) (b) (vi), (vii), (xi) and (xii)

Article 8 (2) (b) (vi): War crime of killing or wounding a person *hors de combat*

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused killed or injured one or more persons.
3. Such person or persons were *hors de combat*.
4. The accused was aware of the factual circumstances that established this status.

Article 8 (2) (b) (vii) – 1: War crime of improper use of a flag of truce

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused used a flag of truce to feign an intention to negotiate when there was no such intention on the part of the accused.
3. The accused knew or should have known of the prohibited nature of such use.
4. The conduct resulted in death or serious personal injury.

Article 8 (2) (b) (vii) – 2: War crime of improper use of a flag, insignia or uniform of the hostile party

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused used the flag, insignia or uniform of the hostile party while engaged in an attack.
3. The accused knew or should have known of the prohibited nature of such use.
4. The conduct resulted in death or serious personal injury.

Article 8 (2) (b) (vii) – 3: War crime of improper use of a flag, insignia or uniform of the United Nations

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused used a flag, insignia or uniform of the United Nations in a manner prohibited under the international law of armed conflict.
3. The accused knew of the prohibited nature of such use.
4. The conduct resulted in death or serious personal injury.

Article 8 (2) (b) (vii) – 4: War crime of improper use of the distinctive emblems of the Geneva Conventions

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused used the distinctive emblems of the Geneva Conventions for combatant purposes[23] in violation of the international law of armed conflict.
3. The accused knew or should have known of the prohibited nature of such use.
4. The conduct resulted in death or serious personal injury.

Article 8 (2) (b) (xi): War crime of treacherously killing or wounding

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused invited the confidence of one or more persons belonging to an adverse party and to believe that he or she was entitled to or is obliged to accord protection under rules of international law applicable in armed conflict with intent to betray that confidence.
3. The accused killed or injured that person or persons.[24]
4. In killing or injuring, the accused made use of the confidence invited by him or her.

Article 8 (2) (b) (xii): War crime of denying quarter

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The accused declared or ordered that there shall be no survivors.
3. The accused was in a position of effective command or control over the subordinate forces to which the declaration or order was directed.
4. Such declaration or order was given in order to threaten an adversary or to conduct hostilities on the basis that there shall be no survivors.

* * *

[23] "Combatant purposes" in these circumstances means purposes directly related to hostilities and not including medical, religious or similar activities.

[24] The term "killed" is interchangeable with the term "caused death".

Compilation of proposals prepared by the Secretariat

Article 8 (2) (b) (viii)

I. Proposal by the United States of America (PCNICC/1999/DP.4/Add.2)

Article 8.2 (b) (viii) – 1: War crime of transferring Occupying Power citizens

Elements

1. That the act took place in the course of a military occupation with respect to territory where authority of a hostile army was actually established and exercised.
2. That the accused intended to effect the compulsory transfer, on a large scale, of parts of the population of the Occupying Power into such occupied territory.
3. That the accused effected such transfer of nationals of the Occupying Power into such occupied territory.
4. That the accused intended that such transfer would endanger the separate identity of the local population in such occupied territory.
5. That the transfer worsened the economic situation of the local population and endangered their separate identity.
6. That the transfer was without, and the accused knew it was without, lawful justification or excuse.

Comments

The "without lawful justification or excuse" element of this offence would mean, for example, that the compulsory movement of civilians for the purpose of the fulfilment of the obligations of the Occupying Power under international law with respect to territory it occupies (e.g., article 43 of the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land) would not result in culpability with respect to this offence.

Article 8.2 (b) (viii) – 2: War crime of deportation

(See also art. 8.2 (a) (vii), art. 8.2 (e) (viii))

Elements/Comments

Use elements for article 8.2 (a) (vii)–1, but delete element 5 regarding the protected status of the transferees.

Article 8.2 (a) (vii) – 1: War crime of deportation

(See also art. 8.2 (b) (viii), art. 8.2 (e) (viii))

Elements

1. That the act took place in the course of an international armed conflict.
2. That the accused intended to transfer one or more persons from their lawful place of residence.
3. That the accused caused one or more persons to be forcibly transferred from their lawful place of residence through expulsion or other coercive acts.
4. That the forcible transfer was without, and the accused knew it was without, lawful justification or excuse.
5. That the person or persons transferred were persons protected by Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War of 1949.

Comments

States are authorized, for reasons of security and military necessity, to intern civilians in some situations in accordance with articles 41 to 43, 68 and 79 to 104 of Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War of 1949. It is the Prosecutor's burden to prove that internment of civilians was not undertaken for security or other lawful purposes once a prima facie case is made for that defence.

II. Proposal by Costa Rica, Hungary and Switzerland (PCNICC/1999/WGEC/DP.8)

Article 8 (2) (b) (viii): The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator:
   (a) Transferred, directly or indirectly, parts of its own population into the territory it occupies;[25] or
   (b) Deported or transferred all or parts of the population of the occupied territory within or outside this territory.

[25] Paragraph 2 (a) was subsequently amended orally by the delegation of Switzerland so as to read:
"Transferred, directly or indirectly, parts of the civilian population of the occupying power into the occupied territory it occupies;"

III. Proposal by Japan (PCNICC/1999/WGEC/DP.12)

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

1. The act took place in the context of military occupation with respect to territory where authority of a hostile army was established and exercised.
2. The Occupying Power caused the transfer, directly or indirectly, of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.
3. The accused was responsible for such transfer or deportation.
4. Such transfer or deportation was conducted in violation of article 49 of the Fourth Geneva Convention.

IV. Proposal by Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Morocco, Oman, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic, Tunisia, the United Arab Emirates and Yemen (PCNICC/1999/WGEC/DP.25)

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator, directly or indirectly:
   (a) Induced, facilitated, participated or helped in any manner in the transfer of civilian population of the Occupying Power into the territory it occupies; or
   (b) Deported or transferred all or parts of the population of the occupied territory within or outside this territory.
3. The perpetrator acted wilfully and knowingly.